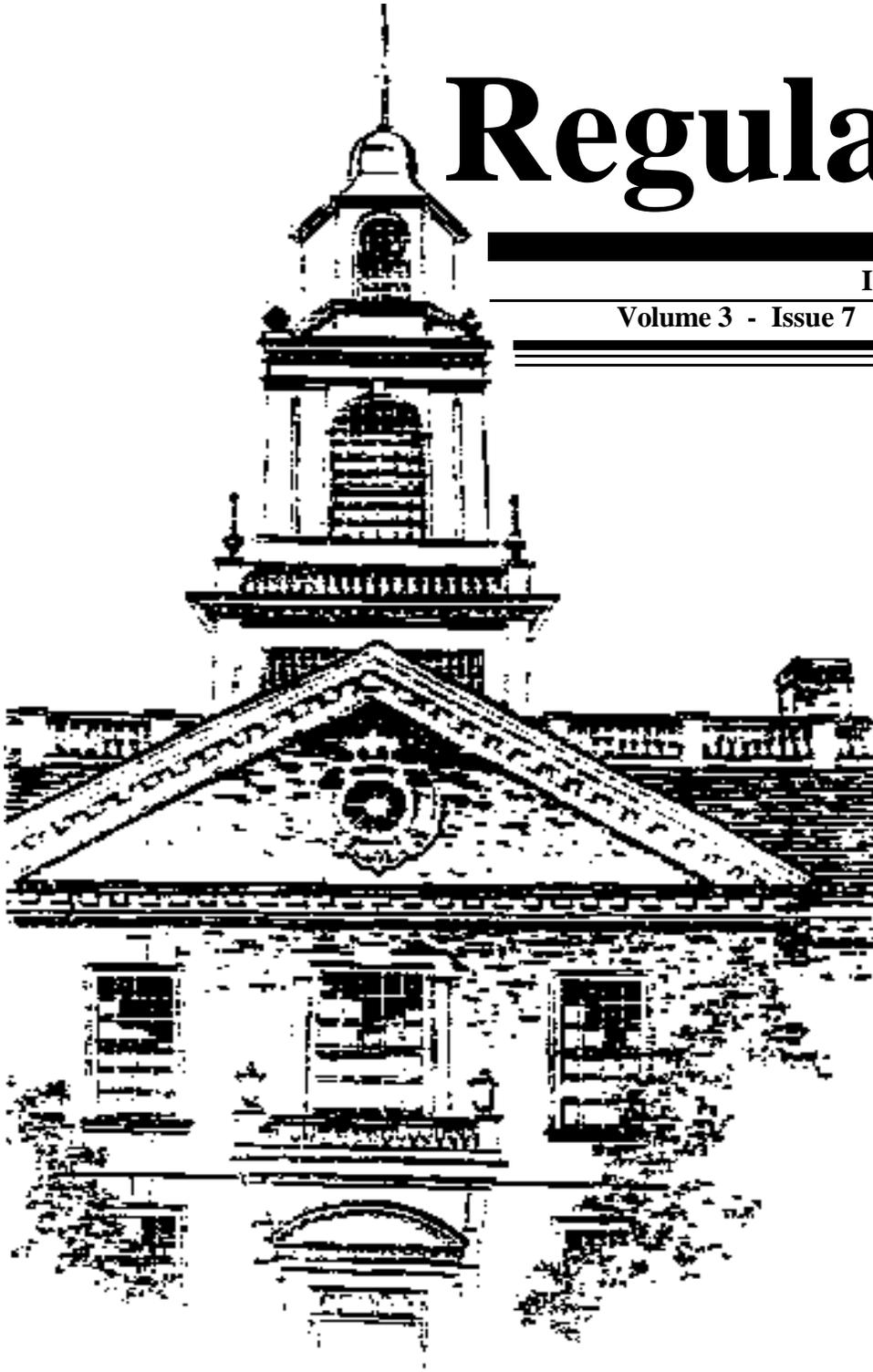

Delaware Register of Regulations



Issue Date: January 1, 2000

Volume 3 - Issue 7

Pages 832 - 1006

IN THIS ISSUE:

Regulations:

Errata
Proposed
Final

Governor

Executive Orders
Appointments

Attorney General

Opinions

General Notices

Calendar of Events &
Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before December 15, 1999.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

833

DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

2 **DE Reg.** 1000 - 1010 (12/1/98)

Refers to Volume 2, pages 1000 - 1010 of the Delaware Register issued on December 1, 1998.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section,

no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.

DIVISION OF RESEARCH STAFF:

William S. Montgomery, Director, Division of Research; **Walter G. Feindt**, Deputy Director; **Kathleen K. Amalfitano**, Secretary; **Jeffrey W. Hague**, Registrar of Regulations; **Maryanne McGonegal**, Research Analyst; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Alex W. Mull**, Assistant Registrar; **Deborah A. Porter**, Administrative Secretary; **Virginia L. Potts**, Administrative Assistant; **Barbara Ryan**, Public Information Clerk; **Ted Segletes**, Paralegal; **Don Sellers**, Printer; **Thom Shiels**, Legislative Attorney; **Marguerite P. Smith**, Public Information Clerk; **Alice W. Stark**, Legislative Attorney; **Mary Jane Starkey**, Senior Secretary; **Marvin L. Stayton**, Printer; **Rochelle Yerkes**, Senior Secretary.

TABLE OF CONTENTS

835

Cumulative Tables..... 837

1115 Demonstration Waiver..... 916

ERRATA

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

Delaware 1996 Periodic Ozone State Implementation
Plan Emissions Inventory for VOC, NOx,
and CO843

PROPOSED

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Accountancy..... 850

DEPARTMENT OF AGRICULTURE HARNES RACING COMMISSION

Harness Racing Commission (24 proposed
amendments)..... 866

THOROUGHBRED RACING COMMISSION

Appeals from Decisions of the Stewards,
Rule 19.03(a)..... 885
Requests for Continuances must be Filed with the
Administrator of Racing, Rule 19.06..... 885

DEPARTMENT OF EDUCATION

Children With Disabilities..... 886
Educational Programs for Students with Limited
English Proficiency..... 900
Pre-referral of Enrolled Students for Special
Education and/or Related Services, Repeal... 903
Services for Exceptional Children, Repeal..... 903

DEPARTMENT OF FINANCE

Tax Appeal Board, Rules & Regulations..... 905

DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Non-Emergency Medical Transportation
Provider Policy..... 914

DEPARTMENT OF TRANSPORTATION

Statewide Access Management Policy & Statewide
Classifications Maps..... 916

FINAL

DEPARTMENT OF EDUCATION

School Transportation..... 942

DEPARTMENT OF FINANCE

DIVISION OF REVENUE STATE LOTTERY OFFICE

Non-Discrimination on the Basis of Disability in
Delaware Lottery Programs, Rule 29..... 951

DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Conrad State 20 / J-1 Visa Waiver Program..... 956

DIVISION OF SOCIAL SERVICES

Eligibility Manual Section 14950, Guaranteed
Eligibility..... 957
DSSM 20100, Long Term Care..... 958
Durable Medical Equipment Provider Manual..... 958

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

Reg. No. 36, Acid Rain Program..... 959

DEPARTMENT OF PUBLIC SAFETY

BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

Firearm's Policy..... 960
Personnel Rosters & Job Assignments..... 961
Uniforms, Patches, Badges, Seals, Vehicular
Markings..... 961
Use of Animals..... 963

GOVERNOR

Executive Order No.70, Amendment to Executive Order No. 27 Regarding the Violence Against Women Act Implementation Committee.....	964
Executive Order No. 71, Creating the Governor's Building and Trade Council.....	964
Appointments.....	966

ATTORNEY GENERAL

Opinion No. 99-IB01, Request for Clarification of Att. Gen. Op. 95-IB06 (January 27, 1995).....	967
Opinion No. 99-IB02, Freedom of Information Act Complaint Against City of New Castle.....	967
Opinion No. 99-IB03, Freedom of Information Act Complaint Against Town of Bethany Beach.....	968
Opinion No. 99-IB04, State Emergency Response Commission Legal Opinion.....	969
Opinion No. 99-IB05, Freedom of Information Act Complaint Against Town of Bethany Beach.....	971
Opinion No. 99-IB06, Durational Residency Requirement for New Castle County Council.....	972
Opinion No. 99-IB07, Whether Driving Under the Influence Offenses May Be Pardoned.....	973
Opinion No. 99-IB08, Freedom of Information Act Complaint Against Christina School District.....	974
Opinion No. 99-IB08, Constitutionality of 24 Del.C. § 1341.....	976
Opinion, No. 99-IB10, Local Disenfranchisement of Delinquent Taxpayers.....	981
Opinion No. 99-IB11, Freedom of Information Act Complaint Against City of Newark.....	984
Opinion No. 99-IB12, Freedom of Information Act Complaint Against Brandywine School District.....	985
Opinion No. 99-IB13, Department of Agriculture Regulations Enacted Pursuant to 16 Del. C § 4757(e).....	985
Opinion No. 99-IB14, Freedom of Information Act Complaint Against Town of Elsmere.....	988

GENERAL NOTICES

DeIDOT Motor Fuel Tax Applications, Revisions.....	990
--	-----

CALENDAR OF EVENTS/HEARING NOTICES

Board of Accountancy, Notice of Public Hearing.....	1004
Harness Racing Commission, Notice of Public Hearing.....	1004
Thoroughbred Racing Commission, Notice of Public Hearing.....	1004
Dept. of Education, Notice of Monthly Meeting..	1005
Delaware Tax Appeal Board, Rules & Regulations Notice of Public Comment Perior.....	1005
DHSS, Div. of Social Services, Non-Emergency Medical Transportation Provider Policy, Notice of Public Comment Period.....	1005
DHSS, Div. of Social Services, 1115 Demonstration Waiver, Notice of Public Comment Period.....	1005
DeIDOT, Statewide Access Management Policy & Statewide Classifications Maps, Notice of Public Hearing.....	1006

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the Delaware Register of Regulations.

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the Register in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

Delaware State Fire Prevention Commission	
BLS Ambulance Provider/First Responder.....	3 DE Reg. 122 (Prop.)
	3 DE Reg. 750 (Final)
Standard for the Marking, Identification and Accessibility of Fire Lanes, Exits, Fire Hydrants, Sprinkler and Standpipe Connections	3 DE Reg. 97 (Final)
NFPA Fire Codes & Standards, Incorporation by Reference.....	3 DE Reg. 416 (Final)
Department of Administrative Services	
Division of Professional Regulation	
Board of Cosmetology and Barbering.....	3 DE Reg. 573 (Prop.)
Board of Electrical Examiners.....	3 DE Reg. 522 (Final)
Board of Examiners of Nursing Home Administrators.....	3 DE Reg. 486 (Prop.)
Board of Examiners of Psychologists.....	3 DE Reg. 576 (Prop.)
Board of Nursing.....	3 DE Reg. 690 (Prop.)
Board of Pharmacy	
Regulation V(A)(7) & V(D)(3)(c), Dispensing.....	3 DE Reg. 8 (Prop.)
	3 DE Reg. 431 (Final)
Regulation VI- D, Pure Drug Regulations.....	3 DE Reg. 8 (Prop.)
Regulation XIV - Administration of Injectable Medications.....	3 DE Reg. 8 (Prop.)
Voluntary Treatment Option for Chemically Dependent or Impaired Professionals.....	3 DE Reg. 571 (Prop.)
Merit Employee Relations Board, Chapter 20, Grievance Procudure.....	3 DE Reg. 167 (Final)
Department of Agriculture	
Farmland Preservation Program.....	3 DE Reg. 170 (Final)
Harness Racing Commission	
Preference Dates, Chapter VII, Rule I-F.....	3 DE Reg. 432 (Final)
Overnight Events, Chapter VI, Rule II-A-5.....	3 DE Reg. 432 (Final)
Thoroughbred Racing Commission	
Bleeders, Rule 10.04.....	3 DE Reg. 360 (Prop.)
	3 DE Reg. 754 (Final)
Bleeder Medication, Rule 15.02.....	3 DE Reg. 360 (Prop.)
	3 DE Reg. 754 (Final)
Department of Education	
Accumulation of Annual Leave.....	3 DE Reg. 709 (Prop.)
Administrator Contracts.....	3 DE Reg. 709 (Prop.)
Child Nutrition	3 DE Reg. 10 (Prop.)
	3 DE Reg. 524 (Final)
Deferred Compensation	3 DE Reg. 363 (Rep.)
	3 DE Reg. 633 (Final)
Definitions, Public and Private Schools.....	3 DE Reg. 709 (Prop.)
Delaware Student Testing Program.....	3 DE Reg. 687 (Errata)
Delayed Certification, Sub-Standard Certification, Provisional	
Certificate, Repeal of.....	3 DE Reg. 709 (Prop.)
DSSAA Constitution & Bylaws, 29 amendments.....	3 DE Reg. 435 (Final)

DSSAA Constitution & Bylaws, Rule 1 & 33.....	3	DE Reg.	11 (Prop.)
	3	DE Reg.	525 (Final)
Health Examinations for School District Employees.....	3	DE Reg.	13 (Prop.)
	3	DE Reg.	526 (Final)
K-12 Comprehensive Health Education and Family Life			
Education Policy.....	3	DE Reg.	717 (Prop.)
Maternity Leave, Repeal.....	3	DE Reg.	527 (Rep.)
Military Leave, Credit for Service in the Armed Forces.....	3	DE Reg.	361 (Prop.)
	3	DE Reg.	630 (Final)
Payment of Personnel under Various Programs.....	3	DE Reg.	492 (Prop.)
	3	DE Reg.	755 (Final)
Payment Schedules for Contractual Programs/In-Service Education.....	3	DE Reg.	363 (Rep.)
	3	DE Reg.	633 (Final)
Payment of Teachers in Summer Programs in Vocational-Technical			
School Districts.....	3	DE Reg.	363 (Rep.)
	3	DE Reg.	633 (Final)
Permanent File of School Districts.....	3	DE Reg.	709 (Prop.)
Professional Employees Strikes.....	3	DE Reg.	709 (Prop.)
Recruiting & Training of Professional Educators for Critical Curricular Areas.....	3	DE Reg.	100 (Final)
Regulation for Charter Schools - Admission, Repeal.....	3	DE Reg.	492 (Rep.)
	3	DE Reg.	758 (Final)
School Crisis Response Plans.....	3	DE Reg.	434 (Final)
School Health Tuberculosis (Tb) Control Program.....	3	DE Reg.	440 (Final)
School Safety Audit.....	3	DE Reg.	433 (Final)
School Transportation	3	DE Reg.	588 (Prop.)
Sick Leave	3	DE Reg.	709 (Prop.)
State Salary Increase Adjustments for Changed Status.....	3	DE Reg.	363 (Rep.)
	3	DE Reg.	633 (Final)
Student Testing Program.....	3	DE Reg.	364 (Prop.)
	3	DE Reg.	582 (Prop.)
Teacher Work Day.....	3	DE Reg.	709 (Prop.)
Teacher of the Year Award.....	3	DE Reg.	104 (Final)
Department of Finance			
Administration of the Education Expense & Property Tax Relief Fund.....	3	DE Reg.	597 (Prop.)
Division of Revenue			
State Lottery Office			
Definition of Technology Provider, Regulation 2.0.....	3	DE Reg.	719 (Prop.)
Licensing Process for Technology Providers,			
Regulations 4.1 and 4.2.....	3	DE Reg.	719 (Prop.)
Non-Discrimination on the Basis of Disability in Delaware Lottery			
Programs, Rule 29	3	DE Reg.	600 (Prop.)
Payment of Prizes, Powerball Game, Rule 23.....	3	DE Reg.	126 (Prop.)
	3	DE Reg.	523 (Final)
Requirements for Video Lottery Agent to File Financial Reports,			
Regulation 8.2.....	3	DE Reg.	720 (Prop.)
Requirements for Video Lottery Agents to File Copies of all Video			
Lottery Related Contracts, Regulation 6.35.....	3	DE Reg.	720 (Prop.)
Technology Provider Duties, Regulation 5.11.....	3	DE Reg.	720 (Prop.)
Department of Health & Social Services			
Division of Public Health			
Conrad State 20 / J-1 Visa Waiver Program.....	3	DE Reg.	603 (Prop.)
Delaware Trauma System Rules & Regulations.....	3	DE Reg.	14 (Prop.)
	3	DE Reg.	442 (Final)
Metabolic Disorders & Establishment of Case Review Committee,			
Regulations Defining	3	DE Reg.	529 (Final)
State of Delaware Food Code.....	3	DE Reg.	495 (Prop.)

Office of Drinking Water		
Regulations Governing Public Drinking Water Systems.....	3	DE Reg. 197 (Final)
Division of Social Services		
DSSM Sec. 2023, Program Violations.....	3	DE Reg. 287 (Final)
DSSM Sec. 3002, Time Limit, Temporary Welfare Program.....	3	DE Reg. 369 (Prop.)
DSSM Sec. 3002, Time Limit, Temporary Welfare Program, Withdraw of.....	3	DE Reg. 759 (Final)
DSSM Sec. 3002, Exceptions to the Time Limit Counter.....	3	DE Reg. 443 (Final)
DSSM Sec. 3031, Work for your Welfare.....	3	DE Reg. 443 (Prop.)
DSSM Sec. 3032, Diversion Assistance.....	3	DE Reg. 371 (Prop.)
DSSM Sec. 9059, Income Exclusions.....	3	DE Reg. 444 (Final)
DSSM Sec. 11003.7, Income Limits & Determination of Fees.....	3	DE Reg. 287 (Final)
DSSM Sec. 11003.7.2, Income Limits & Determination of Fees.....	3	DE Reg. 497 (Prop.)
DSSM Sec. 11003.7.2, Income Limits & Determination of Fees.....	3	DE Reg. 762 (Final)
DSSM Sec. 11003.7.7, Income Limits & Determination of Fees.....	3	DE Reg. 497 (Prop.)
DSSM Sec. 11003.7.7, Income Limits & Determination of Fees.....	3	DE Reg. 762 (Final)
DSSM Sec. 11004.3, Income Limits & Determination of Fees.....	3	DE Reg. 497 (Prop.)
DSSM Sec. 11004.3, Income Limits & Determination of Fees.....	3	DE Reg. 762 (Final)
DSSM Sec. 11004.7, Determination of Child Care Fee.....	3	DE Reg. 42 (Prop.)
DSSM Sec. 11004.7.1, Income Limits & Determination of Fees.....	3	DE Reg. 444 (Final)
DSSM Sec. 11004.7.1, Income Limits & Determination of Fees.....	3	DE Reg. 497 (Prop.)
DSSM Sec. 11004.7.1, Income Limits & Determination of Fees.....	3	DE Reg. 762 (Final)
DSSM Sec. 11004.7.11, Income Limits & Determination of Fees.....	3	DE Reg. 497 (Prop.)
DSSM Sec. 11004.7.11, Income Limits & Determination of Fees.....	3	DE Reg. 762 (Final)
DSSM Sec. 13444, Qualified Medicare Beneficiaries (QMB).....	3	DE Reg. 616 (Prop.)
DSSM Sec. 13445, Specified Low Income Medicare Beneficiaries (SLMB).....	3	DE Reg. 616 (Prop.)
DSSM Sec. 13447, Qualifying Individuals	3	DE Reg. 616 (Prop.)
DSSM Sec. 14433.2, Eligibility for State Funded Benefits (Nonqualified Aliens).....	3	DE Reg. 634 (Final)
DSSM Sec. 15430, Adoption Subsidy Children.....	3	DE Reg. 616 (Prop.)
DSSM Sec. 17300, Qualified Medicare Beneficiaries	3	DE Reg. 616 (Prop.)
DSSM Sec. 17300.3.2.5, Unearned Income	3	DE Reg. 616 (Prop.)
DSSM Sec. 17300.3.3, Resources.....	3	DE Reg. 616 (Prop.)
DSSM Sec. 17300.3.3.1, Excluded Resources.....	3	DE Reg. 616 (Prop.)
DSSM Sec. 18700.5, Cancellation of Coverage for Nonpayment of Premiums.....	3	DE Reg. 617 (Prop.)
Durable Medical Equipment Provider Manual, Nutrition Therapy.....	3	DE Reg. 618 (Prop.)
Eligibility Manual, 15400, Income.....	3	DE Reg. 107 (Final)
Eligibility Manual, 16240, Composition of Budget Unit.....	3	DE Reg. 107 (Final)
Eligibility Manual, A Better Chance, Delaware TANF Plan.....	3	DE Reg. 634 (Final)
General Policy Manual	3	DE Reg. 277 (Final)
General Policy Manual, Delaware Prescription Assistance Program (DPAP).....	3	DE Reg. 620 (Prop.)
General Policy Manual, Eligibility for DHCP.....	3	DE Reg. 497 (Prop.)
General Policy Manual, Eligibility for DHCP.....	3	DE Reg. 776 (Final)
Home Health Provider Manual, Assisted Living Medicaid Waiver Program.....	3	DE Reg. 374 (Prop.)
Home Health Provider Manual, Assisted Living Medicaid Waiver Program.....	3	DE Reg. 776 (Final)
Independent Laboratory Provider Manual.....	3	DE Reg. 127 (Prop.)
Independent Laboratory Provider Manual.....	3	DE Reg. 531 (Final)
Pharmacy Provider Manual, Drug Rebate Programs.....	3	DE Reg. 620 (Prop.)
Pharmacy Provider Manual, Drugs Used for Cosmetic Purposes.....	3	DE Reg. 375 (Prop.)
Pharmacy Provider Manual, Drugs Used for Cosmetic Purposes.....	3	DE Reg. 777 (Final)
Practitioner Provider Manual.....	3	DE Reg. 277 (Final)
Practitioner Provider Manual, Pharmacy Services.....	3	DE Reg. 620 (Prop.)
Private Duty Nursing, HCBS Waiver and Assisted Living Manual.....	3	DE Reg. 278 (Final)

Department of Insurance

Regulation 56, Life & Health Submissions Regarding Acquired

Immunodeficiency Syndrome (AIDS).....	3	DE Reg. 288 (Final)
Regulation 82, Standards of Payment for Multiple Surgical Procedures.....	3	DE Reg. 636 (Final)
Regulation 83, Standards of Payment for Assistants at Surgery.....	3	DE Reg. 638 (Final)

Department of Labor

Division of Employment & Training

Apprenticeship & Training Rules & Regulations.....	3	DE Reg. 42 (Prop.)
	3	DE Reg. 641 (Final)

Department of Natural Resources & Environmental Control

Division of Air & Waste Management

Air Quality Management Section

Delaware 1996 Periodic Ozone State Implementation Plan Emission

Inventory for VOC, Nox, and CO.....	3	DE Reg. 722 (Prop.)
-------------------------------------	---	----------------------------

Delaware 1996 Milestone Demonstration for Kent and New Castle

Counties.....	3	DE Reg. 729 (Prop.)
---------------	---	----------------------------

Delaware On-Road Mobile Source Emissions Budgets for the Delaware,

Phase II Attainment Demonstration.....	3	DE Reg. 127 (Prop.)
--	---	----------------------------

Reg. No. 3, Ambient Air Quality Standards.....	3	DE Reg. 778 (Final)
--	---	----------------------------

Reg. No. 36, Acid Rain Program.....	3	DE Reg. 621 (Prop.)
-------------------------------------	---	----------------------------

Reg. No. 37, NOx Budget Program.....	3	DE Reg. 376 (Prop.)
--------------------------------------	---	----------------------------

	3	DE Reg. 779 (Final)
--	---	----------------------------

Reg. No. 38, Emission Standards for Hazardous Air Pollutants for Source

Categories, Subpart A.....	3	DE Reg. 51 (Prop.)
----------------------------	---	---------------------------

	3	DE Reg. 445 (Final)
--	---	----------------------------

Reg. No. 38, Emission Standards for Hazardous Air Pollutants for Source

Categories, Subpart N.....	3	DE Reg. 59 (Prop.)
----------------------------	---	---------------------------

	3	DE Reg. 445 (Final)
--	---	----------------------------

Reg. No. 39, NOx Budget Trading Program.....	3	DE Reg. 129 (Prop.)
--	---	----------------------------

Reg. No. 40, Delaware's National Low Emissions Vehicle Program.....	3	DE Reg. 532 (Final)
---	---	----------------------------

2002 Rate-of-Progress Plan for Kent & New Castle Counties.....	3	DE Reg. 65 (Prop.)
--	---	---------------------------

Waste Management Section

Regulations Governing Hazardous Waste.....	3	DE Reg. 534 (Final)
--	---	----------------------------

Division of Fish & Wildlife

Non-Tidal Fishing Regulations, NT-2, Bag Limits & Seasons.....	3	DE Reg. 748 (Prop.)
--	---	----------------------------

Shellfish Regulations

S-52, Requirement for Collecting Horseshoe Crabs for Persons Under 16.....	3	DE Reg. 622 (Prop.)
--	---	----------------------------

S-53, Number of Persons Accompanying a Person with a Valid Horseshoe

Crab Collecting Permit.....	3	DE Reg. 623 (Prop.)
-----------------------------	---	----------------------------

S-54, Possession Limit of Horseshoe Crabs, Exceptions.....	3	DE Reg. 623 (Prop.)
--	---	----------------------------

S-55A, Horseshoe Crab Dredge Permit Lottery.....	3	DE Reg. 652 (Final)
--	---	----------------------------

S-58, Horseshoe Crab Containment and Transportation Restrictions.....	3	DE Reg. 623 (Prop.)
---	---	----------------------------

S-61, Collecting Horseshoe Crabs at Night, Prohibited.....	3	DE Reg. 623 (Prop.)
--	---	----------------------------

Tidal Finfish Reg. No. 4, Summer Flounder Size Limits; Possession Limits

Season.....	3	DE Reg. 737 (Prop.)
-------------	---	----------------------------

Tidal Finfish Reg. No. 6, Striped Bass Limits; Recreational Fishing

Seasons; Method of Take; Creel Limit; Possession Limit.....	3	DE Reg. 739 (Prop.)
---	---	----------------------------

Tidal Finfish Reg. No. 7, Striped Bass Possession Size Limit; Exceptions.....	3	DE Reg. 739 (Prop.)
---	---	----------------------------

Tidal Finfish Reg. No. 10, Weakfish Size Limits; Possession Limits; Seasons.....	3	DE Reg. 740 (Prop.)
--	---	----------------------------

Tidal Finfish Reg. No. 23, Black Sea Bass Size Limits; Trip Limits; Seasons;

Quotas.....	3	DE Reg. 740 (Prop.)
-------------	---	----------------------------

Tidal Finfish Reg. No. 25, Atlantic Sharks.....	3	DE Reg. 741 (Prop.)
---	---	----------------------------

Tidal Finfish Reg. No. 26, American Shad & Hickory Shad; Creel Limits.....	3 DE Reg. 742 (Prop.)
Wildlife & Non-Tidal Fishing Regulations.....	3 DE Reg. 289 (Final)
Wildlife Regulations, WR-1,Definitions.....	3 DE Reg. 742 (Prop.)
Wildlife Regulations, WR-4 Seasons, Diamondback Terrapin.....	3 DE Reg. 742 (Prop.)
Wildlife Regulations, WR-6, Game Preserves.....	3 DE Reg. 745 (Prop.)
Wildlife Regulations, WR-14, Falconry.....	3 DE Reg. 745 (Prop.)
Wildlife Regulations, WR-15, Collection or Sale of Native Wildlife.....	3 DE Reg. 746 (Prop.)
Wildlife Regulations, WR-16, Endangered Species.....	3 DE Reg. 747 (Prop.)
Division of Water Resources	
Land Treatment of Wastes.....	3 DE Reg. 445 (Final)
Surface Water Quality Standards	3 DE Reg. 311 (Final)
Total Maximum Daily Load (TMDL) Regulation for zinc in the Red Clay Creek.....	3 DE Reg. 163 (Prop.) 3 DE Reg. 806 (Final)
Total Maximum Daily Load (TMDL) Regulation for zinc in the White Clay Creek.....	3 DE Reg. 164 (Prop.) 3 DE Reg. 650 (Final)
Department of Public Safety	
Division of Alcoholic Beverage Control	
Rule 76, A Rule Governing Taxes Paid On Spirits.....	3 DE Reg. 624 (Prop.)
Department of State	
Office of the State Banking Commissioner	
Regulation No.: 5.1101etal.0002, Instructions for Preparation of Franchise Tax.....	3 DE Reg. 512 (Prop.) 3 DE Reg. 810 (Final)
Regulation No.: 5.1101etal.0005, Instructions for Preparation of Franchise Tax for Federal Savings Banks not Headquartered in this State but Maintaining Branches in this State.....	3 DE Reg. 515 (Prop.) 3 DE Reg. 812 (Final)
Regulation No.: 5.1101etal.0009, Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks.....	3 DE Reg. 517 (Prop.) 3 DE Reg. 815 (Final)
Regulation No.: 5.2112.0001, Mortgage Loan Brokers Operating Regulations.....	3 DE Reg. 403 (Prop.) 3 DE Reg. 654 (Final)
Regulation No.: 5.2111(a).0002, Mortgage Loan Brokers Minimum Requirements for Content of Books & Records.....	3 DE Reg. 404 (Prop.) 3 DE Reg. 655 (Final)
Regulation No. 5.2115.0003, Mortgage Loan Broker Regulations Itemized Schedule of Charges.....	3 DE Reg. 405 (Prop.) 3 DE Reg. 656 (Final)
Regulation No.: 5.2113.0004, Mortgage Loan Brokers Minimum Disclosure Requirements	3 DE Reg. 406 (Prop.) 3 DE Reg. 657 (Final)
Regulation No.: 5.2111(b).0005, Report of Delaware Loan Volume.....	3 DE Reg. 406 (Prop.) 3 DE Reg. 657 (Final)
Regulation No.: 5.2213.0002, Licensed Lenders Minimum Requirements for Content of Books & Records.....	3 DE Reg. 407 (Prop.) 3 DE Reg. 658 (Final)
Regulation No. 5.2218/2231.0003, Licensed Lenders Regulations Itemized Schedule of Charges.....	3 DE Reg. 408 (Prop.) 3 DE Reg. 659 (Final)
Regulation No.: 5.2210(e).0005, Report of Delaware Loan Volume.....	3 DE Reg. 411 (Prop.) 3 DE Reg. 662 (Final)
Regulation No.: 5.2318.0001, Report of Delaware Sale of Checks, Drafts & Money Orders Volume.....	3 DE Reg. 411 (Prop.)

	3 DE Reg. 662 (Final)
Regulation No.: 5.2906(e)/122(b).0001, Motor Vehicle Sales Finance Companies Minimum Requirements for Content of Books & Records.....	3 DE Reg. 412 (Prop.) 3 DE Reg. 663 (Final)
Regulation No.: 5.2906(e).0002, Motor Vehicle Sales Finance Companies Operating Regulations.....	3 DE Reg. 413 (Prop.) 3 DE Reg. 664 (Final)
Regulation No.: 5.2906(e).0003, Report of Delaware Loan Volume Motor Vehicle Installment Contracts.....	3 DE Reg. 414 (Prop.) 3 DE Reg. 665 (Final)
Regulation No.: 5.3404/3409.0001, Preneed Funeral Contracts Regulations Governing Revocable & Irrevocable Trust Agreements.....	3 DE Reg. 415 (Prop.) 3 DE Reg. 666 (Final)
Department of Transportation Subdivision Streets, Mobility Friendly Design Standards	3 DE Reg. 624 (Prop.)
Governor's Office	
Executive Order No. 61, Declaration of Drought Warning; Extending Voluntary Water Conservation Measures; and Other Related Items.....	3 DE Reg. 453
Executive Order No. 62, Proclamation of State of Emergency Due to Drought Emergency; Issuing an Emergency Order Imposing Mandatory Related Action.....	3 DE Reg. 454
Executive Order No. 63, Amendment to Executive Order No. 62 Regarding the State of Emergency due to Drought Emergency.....	3 DE Reg. 546
Executive Order No. 64, Amendment to Executive Order No. 62, as Amended by Executive Order No. 63, Regarding the State of Emergency due to Drought Emergency	3 DE Reg. 546
Executive Order No. 65, Amendment to Executive Order No. 62, as Amended by Executive Order No. 63 and Executive Order No. 64; Regarding the State of Emergency due to Drought Emergency.....	3 DE Reg. 547
Executive Order No. 66, Termination of State of Emergency Due to Drought; Repeal of Mandatory Water Conservation Measures; Declaration of Drought Warning; Extending Voluntary Water Conservation Measures; and Other Related Action.....	3 DE Reg. 550
Executive Order No. 67, Proclamation of State of Emergency Due to Hurricane.....	3 DE Reg. 667
Executive Order No. 68, Termination of Drought Warning and Other Related Action.....	3 DE Reg. 667
Executive Order No. 69, Amendment to Executive Order No.27 as Amended by Executive Order No. 56 Regarding the Creation of the Violence Against Women Act Implementation Committee.....	3 DE Reg. 668
Appointments & Nominations.....	3 DE Reg. 111 3 DE Reg. 341 3 DE Reg. 457 3 DE Reg. 552 3 DE Reg. 669 3 DE Reg. 820
Public Service Commission	
Reg. Docket No. 49, Creation of a Competitive Market for Retail Electric Supply Service.....	3 DE Reg. 538 (Final)

* Please note. The following proposed regulation is being republished in its entirety. In the December issue of the Register incorrect versions of Figure 1-7 and 1-8 were provided for publication.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**

**DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**
Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. 6010)

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

The Delaware 1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO_x, and CO

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The 1990 CAAA requires states with non-attainment areas for ground-level ozone to develop comprehensive periodic emission inventories of ozone precursor pollutants (volatile organic compounds, nitrogen oxides, and carbon dioxide) once every three years after 1990. These emission inventories are purely technical and informational documents. However, states are required to incorporate them into the State Implementation Plan (SIP). Consequently, these periodic emission inventories must be made available for public review and public hearing, and submitted to EPA. This is the second of these inventories covering all three Delaware counties for the 1996 calendar year and ozone season.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del. C., Chapter 60 Section 6010
Clean Air Act Amendments of 1990

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing is scheduled for Tuesday, January 4, 2000, at 6:30 P.M., in the Richardson and Robbins Building, DNREC Auditorium on Kings Highway in Dover, Delaware.

7. PREPARED BY:

Raymond H. Malenfant, PM (302) 739-4791

**1996 Periodic Ozone
State Implementation Plan
EMISSIONS INVENTORY FOR VOC, NO_x, and CO
for the State of Delaware
Final Draft
November 1999**

ACKNOWLEDGEMENT

The agency directly responsible for preparing and submitting the *1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO_x, and CO* is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section.

The overall responsibility for inventory development falls within the Planning and Community Protection Branch of DNREC's Air Quality Management Section, under the management of Raymond H. Malenfant, Program Manager. Alfred R. Deramo, Program Manager of DNREC's Emissions Research, Planning and Attainment Group, was the project supervisor/coordinator of the *1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO_x, and CO*.

The following personnel in DNREC's Air Quality Management Section were responsible for developing their respective portion of this inventory:

Margaret A. Jenkins Pomatto, Environmental Scientist – Technical Editor and Graphics Design, and Off-Road Mobile Source Coordinator

Mohammed A. Mazed, Environmental Engineer – Senior QA/QC Coordinator

John L. Outten, Environmental Scientist – Point Source Coordinator

Kevin D. Yingling, Environmental Scientist – Point Source QA Analyst

Marian A. Hitch, Senior Environmental Compliance Specialist – Point Source QA Analyst, and Stationary Area and Mobile Sources Reviewer

Mark H. Glaze, Resource Planner – On-Road Mobile Source Coordinator, and On-Road and Off-Road Mobile Sources QA Analyst

John L. Sipple, Environmental Scientist – Stationary Area and Natural Sources Coordinator, and QA Analyst

Mark D. Eastburn, Environmental Scientist – Stationary

Area and Natural Sources Coordinator, and QA Analyst

The Delaware Department of Transportation (DelDOT) was responsible for performing the work necessary to create the on-road mobile source portion of this inventory. Mike DuRoss, Transportation Planning Supervisor in the Division of Planning, Transportation Policy and Research Section at DelDOT, acted as the project leader responsible for development and documentation of the on-road mobile source inventory. Various other State agencies, including the Department of Agriculture, the Department of Labor, and the Department of Public Safety, provided activity level data for use in estimating emissions for this inventory.

SECTION 1 BACKGROUND AND EMISSIONS SUMMARY

BACKGROUND

This document presents the *1996 Periodic Ozone State Implementation Plan (SIP) Emissions Inventory for VOC, NO_x, and CO* (hereafter referred to as *1996 Periodic Emissions Inventory*), as required by the Clean Air Act Amendments (CAAA) of 1990. The CAAA of 1990 as does the original Clean Air Act of 1970, contains provisions for the attainment and maintenance of National Ambient Air Quality Standards (NAAQS) for criteria pollutants.

Section 182(a)(1) of the CAAA requires states with nonattainment areas to submit a comprehensive, accurate, current inventory of actual emissions of ozone precursors from all sources within two years of enactment. This initial inventory covers the 1990 calendar year, and is widely known as the 1990 Base Year Ozone SIP Inventory. Section 182(a)(3) of the CAAA requires states with nonattainment areas to submit periodic inventories starting with 1993 and every three years thereafter until the area is redesignated to attainment. In meeting the requirements of Section 182(a)(3) of CAAA, the *1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NO_x* was submitted to and approved by U.S. Environmental Protection Agency (EPA), Region III on May 27, 1994, and March 25, 1996, respectively. The *1993 Periodic Ozone SIP Emissions Inventory for VOC, CO, and NO_x* was submitted to U.S. EPA, Region III on January 30, 1998.

All of Delaware's three counties are in nonattainment of the 1-hour NAAQS for ozone. As shown in Figure 1-1, New Castle and Kent Counties are part of the Philadelphia-Wilmington-Trenton Consolidated Metropolitan Statistical Area (Philadelphia CMSA), which is classified as a "severe" nonattainment area with a design value of 0.187 parts per million (ppm). Sussex County is classified as "marginal" with a design value of 0.130 ppm. The nonattainment areas are defined by the publication *Designation of Areas for Air Quality Planning Purposes*, 40 CFR Part 81, Final Rule,

U.S. EPA, Office of Air and Radiation, Washington, D.C., November 6, 1991. The total geographic area covered by this inventory includes the Kent, New Castle, and Sussex Counties nonattainment areas as shown in Figure 1-2.

This map was adapted from *Major CO, NO₂ and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area*, EPA450/4-92-005a, U.S. EPA, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, N.C., February 1992.

For the purposes of creating a consistent, statewide *1996 Periodic Emissions Inventory*, the entire state of Delaware, including Sussex County, was inventoried according to U.S. EPA guidelines for severe areas. Inventorying Sussex County as if it were a severe area had no effect on the method used to prepare this inventory, nor will it affect future ozone attainment planning activities. The only effect of this decision to inventory Sussex County as if it were a severe area is to improve the accuracy of the point source inventory by including sources in Sussex County that emit between ten and one hundred tons per year (TPY) of VOCs. Otherwise, point sources in Sussex County would be inventoried only if VOC emissions are greater than or equal to one hundred TPY.

Demographic data for the state of Delaware is used to estimate air emissions from many of the sources in this inventory and includes population, employment, housing, and other statistics. A summary of the 1996 demographic information for Delaware by county is presented in Table 1-1. Subsequent sections of this report describe how this data is used to estimate emissions for particular sources.

The remainder of this section presents a summary of Delaware's VOC, NO_x, and CO emissions totals for 1996.

DOCUMENT ORGANIZATION

This document presents detailed discussions of the emission estimation methods, data sources, and quality assurance procedures used to compile this inventory. Each source category is discussed in its own section as follows:

- Section 2 - Point Sources
- Section 3 - Stationary Area Sources
- Section 4 - Off-Road Mobile Sources
- Section 5 - On-Road Mobile Sources
- Section 6 - Natural Sources
- Section 7 - DNREC Quality Assurance Implementation

Reference documentation that is pertinent to the discussion in a particular section of this document is included in an attachment at the end of that particular section. For example, computer printouts and excerpts from

emissions reports relevant to the Section 2 point source discussion are labeled in Attachment 2 and are found at the end of Section 2. Reference documents less directly related to emissions estimations in this inventory, or too large to be included in the attachments, are placed in appendices at the end of this document.

EMISSIONS SUMMARY

The VOC, NO_x, and CO emissions in this *1996 Periodic Emissions Inventory* are estimated on both an annual (TPY) and a daily (TPD) basis. Annual emissions are estimated for calendar year 1996. Daily emissions are estimated for a typical peak ozone season day. The peak ozone season is defined as that contiguous three-month period of the year during which the highest number of ozone exceedances have occurred over the past three to four years. The peak ozone season for the *1996 Periodic Emissions Inventory* report is June through August. Peak ozone season daily emissions represent average emissions that occur on a typical weekday during the peak ozone season. All references to daily or seasonal emissions in this document refer to peak ozone season daily emissions.

In this inventory, VOC, NO_x, and CO emission sources are categorized into point, stationary area, off-road mobile, on-road mobile, and natural sources. Peak ozone season daily and annual emissions are estimated for all of these categories.

Prior to compiling the final numbers in this summary, several adjustments were made to the estimated emissions values. First, in accordance with *Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources*, EPA-450/4-91-016, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, May 1991, [hereafter referred to as *Procedures, Volume I (1991)*], photochemically nonreactive VOC emissions were removed from the inventory. While most VOCs engage in photochemical reactions, some are considered nonreactive under atmospheric conditions. These compounds, as defined in Regulation No. 1 of the *Regulations Governing the Control of Air Pollution*, 40-09-81/02/01, Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, updated to February 1995, do not contribute to ozone formation, therefore are subtracted from the inventory. All references to "nonreactive VOCs" in this document mean **photochemically**, nonreactive VOCs.

Second, emissions from regulated sources were adjusted for rule effectiveness and/or rule penetration, where applicable. Rule effectiveness is an adjustment to the emissions estimates of regulated sources to account for the

fact that all sources are not in compliance with applicable air regulations 100 percent of the time. The rule effectiveness adjustment compensates for underestimates of emissions caused by noncompliance with existing regulations, control equipment downtime, operating problems, and process upsets. Rule effectiveness adjustments were made according to the *Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories*, EPA-452/R-92-010, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, November 1992.

Rule penetration factors are used in conjunction with rule effectiveness to adjust regulated emissions estimates. Rule penetration is the portion of a source category that is affected by a regulation. If a regulation applies to only a certain percentage of sources within a source category, a rule penetration factor is applied to ensure that the rule effectiveness adjustment affects only the emissions values for those regulated sources, and not the emissions values for the unregulated sources in the category. Adjustments for removal of nonreactive VOCs, rule effectiveness, and rule penetration are discussed in detail in appropriate sections of this document. All summary tables in this document list emissions values that have been adjusted as appropriate for removal of nonreactive VOCs, rule effectiveness, and rule penetration.

Differences in emission estimates between this inventory and previous inventories compiled by AQM may be due to a number of reasons, including but not limited to: changes to or addition of emission controls, changes in business or industrial activity, different methods of estimation, and the availability of more complete data.

The results of Delaware's *1996 Periodic Emissions Inventory* are presented in both tabular and graphic form. Table 1-2 summarizes Delaware's 1996 annual emissions of VOC, NO_x, and CO for each county and for the state.

Table 1-3 summarizes Delaware's 1996 peak ozone season daily emissions of VOC, NO_x, and CO for each county and for the state. The state's total peak ozone season daily emissions of VOC, NO_x, and CO are depicted graphically in Figure 1-3. Using the information from Table 1-3, a distribution of the peak ozone season daily emissions by county was prepared as shown in Figure 1-4.

Table 1-4 summarizes Delaware's 1996 annual and peak ozone season daily emissions of VOC, NO_x, and CO by source category. The distribution of peak ozone season daily emissions by source category is depicted graphically in Figure 1-5.

Table 1-5 presents a summary of Delaware's 1996 annual and peak ozone season daily VOC emissions by county and by source category. Tables 1-6 and 1-7 present similar information for NO_x and CO, respectively. This

information is presented graphically in Figures 1-6, 1-7, and 1-8, which show comparisons of source category emissions by county for VOC, NO_x, and CO, respectively.

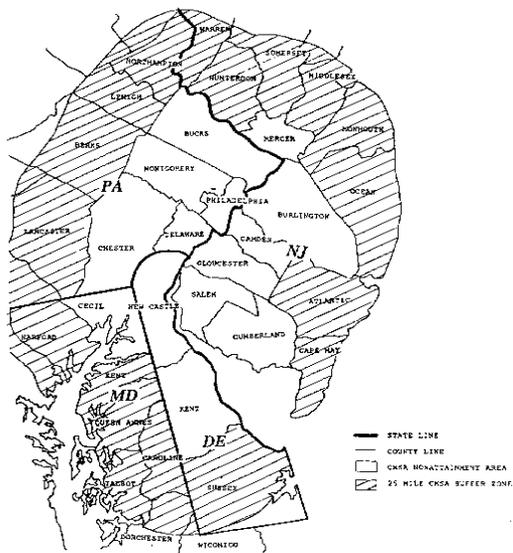


Figure 1-1. Philadelphia-Wilmington-Trenton CMSA Ozone Nonattainment Area¹

¹This map was adapted from *Major CO, NO₂ and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area*, EPA450/4-92-005A, U.S. Environment Protection Agency, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, NC, February 1992.

1-2

Figure 1-2. Inventory Area for the Delaware 1996 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO_x, and CO.

TABLE 1-1
SUMMARY OF 1996 DEMOGRAPHIC INFORMATION
FOR THE STATE OF DELAWARE

Demographic Parameter	KENT COUNTY VALUE	NEW CASTLE COUNTY VALUE	SUSSEX COUNTY VALUE	STATE VALUE
Population ^a	122,906	471,702	130,201	724,809
Land Area (square miles) ^b	594	439	950	1,983
Number of Households ^c	46,920	179,676	49,680	276,276
Manufacturing Employment ^d	6,519	39,319	11,985	57,823
Construction Employment ^d	2,504	15,358	4,172	22,034
Retail Employment ^d	11,895	43,739	13,965	69,599
Commercial/Institutional Employment ^d	37,309	185,653	35,903	258,865
Gasoline RVP ^e	8.1	8.1	8.1	8.1

^a State of Delaware, Delaware Economic Development Office, Delaware Population Projections Consortium, Dover, Delaware. January 1997.

^b *Webster's New Geographic Dictionary*, Miriam Webster Publishing Company, 1984.

^c U.S. Department of Commerce.

^d State of Delaware. Delaware Department of Labor.

^e Developed per EPA guidance using the *American Automobile Manufacturers Association International Fuel Survey for Philadelphia, PA--Summer 1996*.

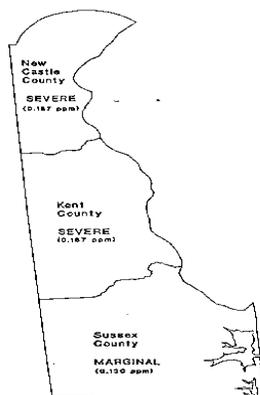


Figure 1-2. Inventory Area for Delaware 1993 Periodic Ozone State Implementation Plan Emissions Inventory for VOC, NO_x, and CO.

1-4

TABLE 1-2
STATE AND COUNTY ANNUAL VOC, NO_x, AND CO EMISSIONS

COUNTY	POLLUTANT EMISSIONS (TPY)		
	VOC	NO _x ^{a,b}	CO ^{a,c}
Kent	11,678	8,218	26,343

New Castle	26,672	31,577	102,084
Sussex	20,596	19,044	36,219
STATE TOTAL	58,946	58,839	164,646

^a Total annual NO_x and CO emissions are not calculated from stationary source solvent use, vehicle refueling and related activities, bioprocess emissions, miscellaneous area sources, and small facilities because there are no methods for determining annual emissions for these sources.

^b Total annual NO_x emissions are not calculated from slash, prescribed, nor agricultural burning because there are no methods for determining annual emissions for these sources.

^c Total annual CO emissions are not calculated from natural sources because there are no methods for determining annual emissions for this source.

**TABLE 1-3
STATE AND COUNTY PEAK OZONE SEASON
DAILY VOC, NO_x, AND CO EMISSIONS**

COUNTY	POLLUTANT EMISSIONS (TPD)		
	VOC	NO _x ^{a,c}	CO ^{a,c,d}
Kent	84.517	27.478	71.729
New Castle	144.866	99.510	359.822
Sussex	156.110	63.033	115.077
STATE TOTAL	385.493	190.021	546.628

^a Total annual NO_x and CO emissions are not calculated from stationary source solvent use, vehicle refueling and related activities, bioprocess emissions, miscellaneous area sources, and small facilities because there are no methods for determining annual emissions for these sources.

^b Total annual NO_x emissions are not calculated from slash, prescribed, nor agricultural burning because there are no methods for determining annual emissions for these sources.

^c Total annual CO emissions are not calculated from natural sources because there are no methods for determining annual emissions for this source.

^d Carbon dioxide emissions from natural sources are not generated by the PC-BEIS2.0 model, therefore are not reported in this inventory.

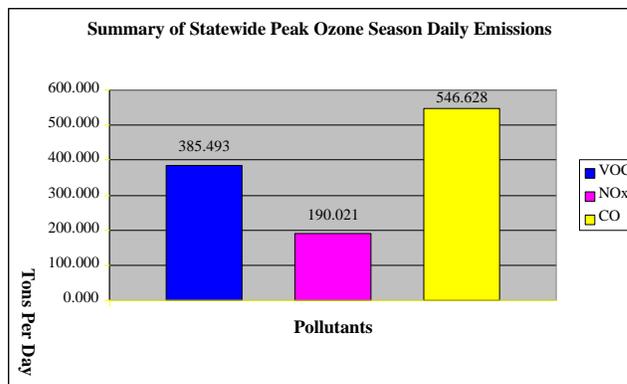


Figure 1-3. Summary of Statewide Peak Ozone Season Daily Emissions

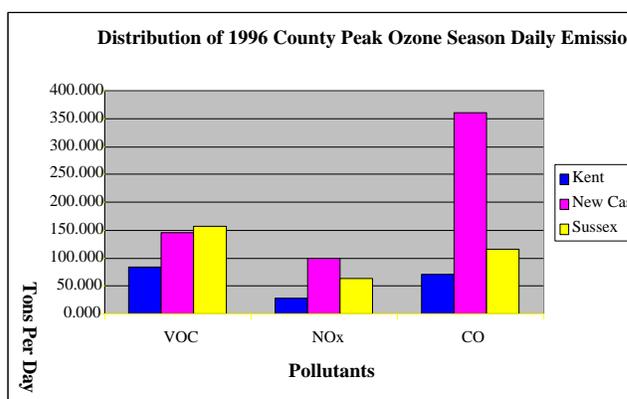


Figure 1-4. Distribution of Peak Ozone Season Daily Emissions by County

**TABLE 1-4
ANNUAL AND PEAK OZONE SEASON DAILY
EMISSIONS BY SOURCE CATEGORY**

SOURCE CATEGORY	POLLUTANT EMISSIONS					
	VOC		NO _x		CO	
	Annual (TPY)	Daily (TPD)	Annual (TPY)	Daily (TPD)	Annual (TPY)	Daily (TPD)
Point Sources	6,322	31.728	25,488	78.799	17,198 ^a	90.655
Stationary Area Sources	15,695 ^a	40.503	3,481 ^a	6.852	7,309	8.236
Off-road Mobile Sources	5,754	24.551	8,935	33.549	39,248	156.537
On-road Mobile Sources	11,014	46.770	19,142	60.670	100,891	291.200
Natural Sources	20,161	241.941	1,793	10.151	N/A ^b	N/A ^b

STATE TOTAL	58,946	385,493	58,839	190,021	164,646	546,628
-------------	--------	---------	--------	---------	---------	---------

^a There are no methods for determining annual NO_x or CO emissions for leaking underground storage tank, and vehicle refueling and spillage emissions sources within the stationary area source category.

^b Not Applicable. Emissions of CO from biogenic sources are not generated by the *PC-BEIS2.0* model, therefore are not reported in this inventory.

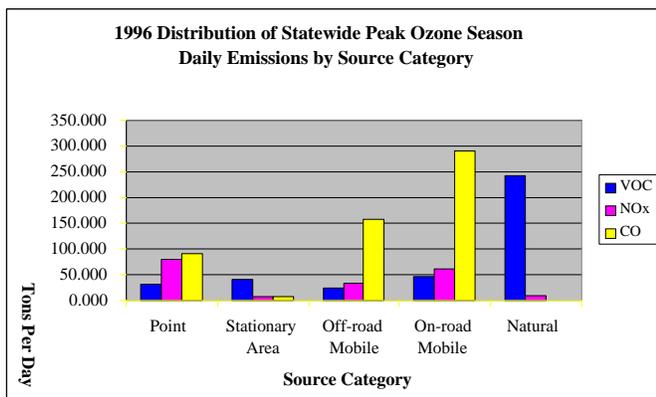


Figure 1-5. Distribution of Statewide Peak Ozone Season Daily Emissions by Source Category

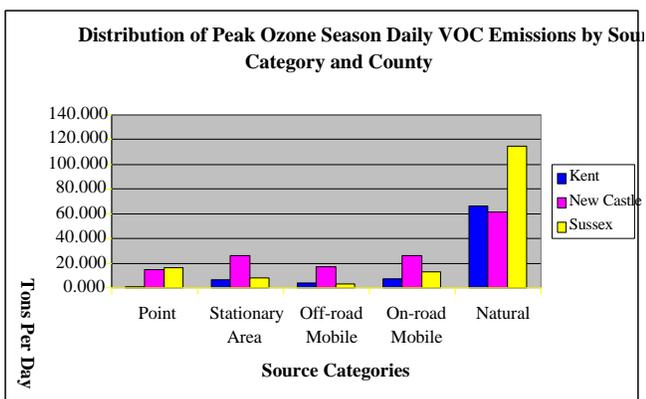


Figure 1-6. Distribution of Peak Ozone Season Daily VOC Emissions by Source Category and County

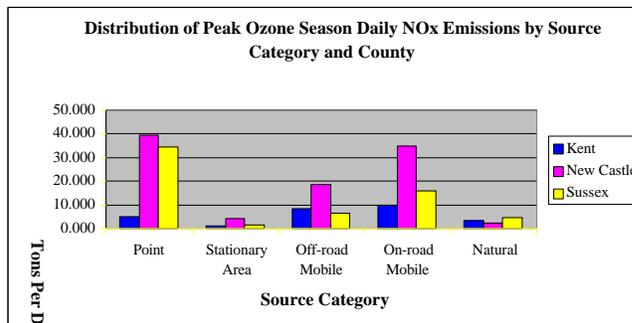


Figure 1-7. Distribution of Peak Ozone Season Daily NO_x Emissions by Source Category and County

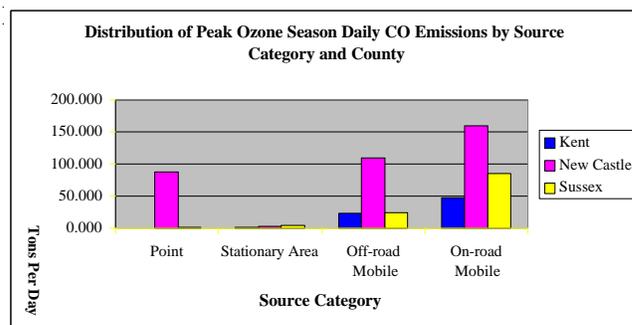


Figure 1-8. Distribution of Peak Ozone Season Daily CO Emissions by Source Category and County

**TABLE 1-5
SUMMARY OF VOC EMISSIONS BY COUNTY AND
SOURCE CATEGORY**

COUNTY	VOC Emissions											
	POINT SOURCES		Stationary Area Sources		Off-Road Mobile Sources		On-Road Mobile Sources		Natural Sources		Total	
	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)*	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)
Kent	208	0.638	3,025	6.301	1,186	4.030	1,976	7.520	5,283	66.028	11,678	84.517
New Castle	3,837	14.340	8,334	25.905	3,728	17.046	6,080	26.090	4,693	61.485	26,672	144.866
Sussex	2,277	16.750	4,336	8.297	840	3.475	2,958	13.160	10,185	114.428	20,596	156.110
Total	6,322	31.728	15,695	40.503	5,754	24.551	11,014	46.770	20,161	241.941	58,946	385.493

**TABLE 1-6
SUMMARY OF NO_x EMISSIONS BY COUNTY AND
SOURCE CATEGORY**

COUNTY	NO _x Emissions											
	Point Sources		Stationary Area Sources		Off-Road Mobile Sources		On-Road Mobile Sources		Natural Sources		Total	
	Annual (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)
Kent	1,176	4.925	540	0.992	2,298	8.384	3,606	9.900	598	3.277	8,218	27.478
New Castle	12,965	39.550	2,202	4.333	4,944	18.649	11,078	34.820	388	2.158	31,577	99.510
Sussex	11,347	34.324	739	1.527	1,693	6.516	4,458	15.950	807	4.716	19,044	63.033
Total	25,488	78.799	3,481	6.852	8,935	33.549	19,142	60.670	1,793	10.151	57,046	190.021

**TABLE 1-7
SUMMARY OF CO EMISSIONS BY COUNTY AND
SOURCE CATEGORY**

County	CO EMISSIONS ^a									
	Point Sources		Stationary Area Sources		Off-Road Mobile Sources		On-Road Mobile Sources		Total	
	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)	ANNUAL (TPY)	DAILY (TPD)
Kent	146	0.527	1,869	1.077	6,200	22.335	18,128	47.790	26,343	71.729
New Castle	16,504	88.427	1,854	2.738	26,773	109.867	56,953	158.790	102,084	359.822
Sussex	548	1.701	3,586	4.421	6,275	24.335	25,810	84.620	36,219	115.077
Total	17,198	90.655	7,309	8.236	39,248	156.537	100,891	291.200	164,646	546.628

^a The PC-BEIS2.0 model does not generate CO emissions from natural sources. Therefore, the natural source category is not included in this table.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY**

Statutory Authority: 24 Delaware Code,
Section 105(1) (24 **Del.C.** 105(1))

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 105(1), the Delaware Board of Accountancy proposes to revise its rules and regulations. Please note that the following rules and regulations are a total rewriting and reordering of existing regulations, and will supersede and replace any previously adopted rules and regulations of the Board. Substantive changes to the regulations include changes in definitions of full and part time employment as it relates to the statutory experience requirement; deletion of provisions pertaining to matters governed by other Acts and Statutes (e.g. disciplinary hearings); establishes application requirements; requires demonstration of good character and education requirements prior to approval to sit for examination; clarifies statutory requirements and required documentation for permits to practice certified public accountancy and for certificate reciprocity; establishes reporting requirements and clarifies substantive requirements for continuing education credits; and establishes procedural rules pertaining to hearings before the Board. In addition, material which unnecessarily duplicates the statutes or other rules and regulations has been stricken. The rules and regulations have been entirely re-ordered and re-numbered.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, February 23, 2000 in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Mary Paskey at the above address or by calling (302) 739-4522, extension 207.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

EXISTING REGULATIONS

The following regulations of the Delaware State Board of Accountancy, the authority for which is contained in the Delaware Code of 1953 (24 Del. Sec. 101 et. seq.), and amendments thereto, should be carefully followed by all Certified Public Accountants and Public Accountants and all applicants for either examination or reciprocity.

SEC. 102(b)-1 - BOARD OF ACCOUNTANCY.

No holder of a CPA certificate may qualify as a public accountant for purposes of serving as a member of the Board.

SEC. 105(c)-1- ETHICS EXAMINATION REQUIREMENT.

Each applicant shall, as a prerequisite to receiving either a certificate as a certified public accountant or a permit to practice public accountancy, furnish to the Board evidence of the successful completion of the AICPA self-study program "Professional Ethics for CPA's" with a grade of not less than 90%.

SEC. 105(i)-1 - RULES OF CONDUCT.

A certified public accountant or a public accountant holding a certificate or permit issued by this Board, agrees to comply with the Rules of Conduct (included herein by reference) contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants. All changes in the Rules and Interpretations made by the American Institute of Certified Public Accountants will automatically be made a part of these Regulations unless specifically rejected by the Board.

SEC. 106(b)-1.

As used in the Act and these regulations, the abbreviation "P.A." means "Public Accountant."

SEC. 107(b)-1.

The regulations of the Board in effect on or before June 30, 1985, included a requirement for each applicant to furnish to the Board evidence of successful completion of the AICPA self-study program "Professional Ethics for CPA's" with a grade of not less than 90% prior to being awarded a certificate. This requirement continues to be in effect for the issuance of a certificate under this subsection.

SEC. 107(b)-2.

Any individual issued a certificate under this subsection shall be required to meet all applicable requirements of Section 109 prior to being issued a permit to practice public accountancy.

SEC. 108(a)(3)-1 - EDUCATION.**SEC. 108(a)(3)-1(a) - HOLDER OF MASTER'S DEGREE.**

(1) To qualify under the education provision, the holder of a Master's Degree must submit proof satisfactory to the Board that he/she holds a Master's Degree with a concentration in accounting (or with substantially the equivalent of such concentration). He/she also must, upon request, submit proof that the college or university granting the degree was, at the time of his/her graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional accrediting association. A Masters Degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted.

(2) The term "substantially the equivalent of such concentration" will be completed at an accredited college or university and completion of at least 21 semester hours of accounting, or the equivalent of 21 semester hours, either as part of applicant's Baccalaureate or Master's Degree program or subsequent to the completion of the Master's Degree program. To be accepted, all such accounting courses must have been completed at an accredited college or university. Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

(3) Except for candidates applying under Section 108(b), the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by the final date for accepting applications for the examination at which the applicant intends to sit.

SEC. 108(a)(3)-1(b) - HOLDER OF BACCALAUREATE DEGREE.

(1) To qualify under the education provision, the holder of a Baccalaureate Degree must submit proof satisfactory to the Board that he/she holds a Baccalaureate Degree with a concentration in accounting (or with substantially the equivalent of such concentration). He/she also must, upon request, submit proof that the college or university granting the degree was, at the time of his/her graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional accrediting association. A Baccalaureate Degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted.

(2) The term "substantially the equivalent of such concentration" will be completed at an accredited college or university and completion of at least 21 semester hours of accounting, or equivalent of 21 semester hours, either as part of applicant's Baccalaureate Degree program or subsequent to the completion of the Baccalaureate Degree program. To be accepted, all such accounting courses must have been completed at an accredited college or university. Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

(3) Except for candidates applying under Section 108(b), the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by the final date for accepting applications for the examination at which the applicant intends to sit.

SEC., 109(a)-1 - CERTIFICATE HOLDER DEFINED.

For purposes of this subsection, certificate holder shall

be defined as the holder of a certificate of certified public accountant issued by any jurisdiction.

SEC. 109(b)-1 - APPLICATION FOR PERMITS TO PRACTICE CERTIFIED PUBLIC ACCOUNTANCY.

An application for a permit or a renewal of a permit to practice certified public accountancy must be submitted on forms prescribed and provided by the Board.

SEC. 109(b)-2 - PROVISIONAL PERMIT.

If the Board fails to grant or deny a permit to practice certified public accountancy with 120 days following receipt of an application filed in proper form, the Board will issue a provisional permit for a period not to exceed ninety days unless extended by the Board for additional 30 day periods. Any provisional permit shall expire upon issuance or denial of permit.

SEC. 109(c)(2)-1 - EXPERIENCE.

SEC. 109(c)(2)-1(a) - GENERAL.

To qualify under the experience requirements set forth in (c)(2)(A),(B), and (C) of this section, the applicant must submit proof satisfactory to the Board that he/she has acquired the statutory number of years of experience as an employee of a firm engaged in the practice of certified public accountancy; public accountancy; or as an accountant in government, commerce, industry, or other field of endeavor which, in the opinion of the Board, is substantially equivalent to experience as an employee of a firm engaged in the practice of certified public accountancy.

SEC. 109(c)(2)-1(b) - EXPERIENCE IN CERTIFIED PUBLIC ACCOUNTANCY.

SEC. 109(c)(2)-1(b)(1) - GENERAL

The Board believes that the distinguishing characteristic of practice as a certified public accountant is the requirement that the practitioner compile, review or audit all financial statements with which his/her name is associated. Accordingly, the Board considers it essential that the applicant submit evidence of extensive experience obtained in engagements, resulting in the issuance of financial statements, conducted under the supervision of a certified public accountant who holds a valid permit to practice certified public accountancy.

SEC. 109(c)(2)-1(b)(2) - EMPLOYER'S AFFIDAVIT.

An affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties and stating the approximate time devoted to each, and affirming that the applicant discharged his/her duties in a competent and professional manner, must accompany the application.

SEC. 109(c)(2)-1(b)(3) - TIME IN WHICH EXPERIENCE MUST BE COMPLETED.

The experience requirement must have been completed not more than three years prior to making application, or initial issuance of a permit to practice certified public accountancy. Any period of experience which was followed by an interruption in such experience lasting more than three years will not be recognized. Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted.

Except in unusual circumstances, a period of full-time employment of less than ten consecutive weeks or part-time employment of less than twenty weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than twenty (20) hours per week. Two part-time employment weeks, as so defined, shall be equivalent to one week of full-time employment.

SEC. 109(c)(2)-1(c) - EXPERIENCE IN GOVERNMENT, INDUSTRY, OR OTHER FIELD OF ENDEAVOR.

SEC. 109(c)(2)-1(c)(1) - APPLICATION FOR EQUIVALENCY STATUS.

Each applicant shall submit a detailed description of the education and experience requirements of entry to his/her job, a detailed description of his/her duties and responsibilities over the entire period of time relied on to meet the experience qualification, a detailed description of the reporting requirements of his/her job, and a statement of the training opportunities in which the applicant has participated. The employment submitted as qualifying experience must include extensive audit experience.

SEC. 109(c)(2)-1(c)(2) - EMPLOYER'S AFFIDAVIT.

An affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment and verifying the applicant's statement of his/her duties and responsibilities, must accompany and be made a part of the application. A review and endorsement of the applicant's qualifying experience by a supervisor (or other superior) who is a certified public accountant will be, helpful to the Board.

SEC. 109(c)(2)-1(c)(3) - EXPERIENCE EQUIVALENCY ESTABLISHED BY THE BOARD.

Each application will be considered on its own merits and the Board will evaluate the applicant's experience, as set forth in the record, for the purpose of determining whether it meets the equivalency requirements. Such experience may be prorated at less than 100% equivalence.

SEC. 109(c)(2)-1(d) - EXPERIENCE IN PUBLIC ACCOUNTANCY.

SEC. 109(c)(2)-1(d) - GENERAL.

The Board believes that the distinguishing characteristic of practice as a public accountant is the requirement that the practitioner compile, review or audit all financial statements with which his/her name is associated. Accordingly, the Board considers it essential that the applicant submit evidence of extensive experience obtained in engagement, resulting in the issuance of financial statements prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

SEC. 109(c)(2)-1(d)(2) - EMPLOYER'S AFFIDAVIT.

An affidavit from each employer with whom qualifying experience is claimed, or the applicant himself/herself where the qualifying experience is claimed an owner or principal of a firm engaged in the practice of public accountancy which is the principal source of the firm's income, setting forth the dates of employment, describing the nature of applicant's duties and stating the approximate time devoted to each, and affirming that applicant discharged his/her duties in a competent and professional manner, must accompany the application. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his/her qualifying experience.

SEC. 109(c)(2)-1(d)(3) - TIME IN WHICH EXPERIENCE MUST BE COMPLETED.

The experience requirement must have been completed not more than three years prior to making application for initial issuance of a permit to practice public accountancy.

Any period of experience which was followed by an interruption in such experience lasting more than three years will not be recognized. Only experience obtained after the conferring of the degree under which the applicant applies shall be accepted.

Except in unusual circumstances, a period of full-time employment shall be not less than thirty-five (35) hours per week.

SEC. 109(d)-1 - EXPERIENCE REQUIRED.

The experience required by this section shall be governed by the provisions of Regulation 109(c)(2)-1(a), 1(b) and 1(c), incorporated by reference herein.

SEC. 109(e)-1 - CONTINUING PROFESSIONAL EDUCATION.**SEC. 109(e)-1(a) - HOURS REQUIRED.**

On June 30, 1987, each permit holder required to do so, must have completed at least forty hours of acceptable continuing professional education in the immediate

preceding twelve-month period or at least 80 hours of acceptable continuing professional education in the immediate preceding 24-month period. All subsequent continuing professional education reporting dates must be on June 30 of each biennial period thereafter and the eighty hours of acceptable continuing professional education submitted must have been completed in the immediate preceding two-year period.

SEC. 109(e)-1(a)(2) - REPORTING REQUIREMENTS.

The Board will mail permit renewal forms which provide for continuing professional education reporting to all permit holders. The Board shall have the power to suspend or revoke the permit of any permit holder whose continuing professional education report is not postmarked on or before the last day of the reporting period.

SEC. 109(c)-1(a)(3) - PRORATION.

Prorated continuing professional education regulations consisting of less than eighty hours shall only apply to the first permit renewal, thereafter all permit holders are required to complete at least eighty hours of acceptable continuing professional education biennially.

SEC. 109(e)-1(b) - EXCEPTIONS.

The Board has the authority to make exceptions to the continuing professional education requirements for reasons including, but not limited to, health, military service, foreign residency, and retirement.

The Board may issue a permit to practice in a case in which the requirements for continuing professional education are not met only upon condition that the applicant follow a particular program or schedule of continuing professional education. An applicant who does not meet the continuing professional education requirement may submit such a program schedule with his/her application and, if such program or schedule is approved by the Board and a conditional permit is issued, the applicant will submit to the Board documentation upon completion of each part of such program or schedule. Completion of such program or schedule will not count toward the continuing professional education requirement for the next or any subsequent renewal of his/her permit to practice.

SEC. 109(e)-1(c) - QUALIFIED PROGRAMS.**SEC. 109(e)-1(c)(1) - GENERAL DETERMINATION.**

The overriding consideration in determining if a specific program qualified as a continuing professional education program is if it is a formal program of learning which contributes directly to the professional competence of the permit holder.

SEC. 109(e)-1(c)(2) - FORMAL PROGRAMS.

Formal programs requiring class attendance will qualify only if-

1. An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years or the outline is provided to the participant or both.
2. The program is at least one hour (a fifty-minute period) in length.
3. The program is conducted by a qualified instructor or discussion leader.
4. A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

SEC. 109(e)-1(c)(3) - PROGRAMS DEEMED APPROVED.

Provided the criteria in Regulations Section 109(e)-1(c)(1) and 1(c)(2) are met, the following are deemed to qualify for continuing professional education:

1. Professional development programs of national, state and local accounting organizations.
2. Technical sessions at meeting of national, state and local accounting organizations and their chapters.
3. University or college courses:
 - (a) Credit courses; each semester hour credit shall equal 15 hours of continuing professional education and each hour on the quarter basis shall equal ten continuing professional education hours.
 - (b) Non-credit courses; each classroom hour shall equal one hour of continuing professional education.
4. Programs of other organizations (accounting, industrial, professional, etc.)
5. Other organized educational programs on technical and other practice subjects including "in-house" training programs of public accounting firms.

SEC. 109(e)-1(c)(4) - CORRESPONDENCE AND INDIVIDUAL STUDY PROGRAMS.

Formal correspondence or other individual study programs which provide evidence of satisfactory completion will qualify, with the amount of credit to be determined by the Board. The Board will not approve any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The maximum credit toward meeting the continuing professional education requirement with formal correspondence or other individual study programs shall not exceed 30% of the total requirement.

SEC. 109(e)-1(c)(5) - INSTRUCTIONS AND DISCUSSION LEADERS.

Credit for one hour of continuing professional education will be awarded for each hour completed as an instructor or discussion leader plus two additional hours of credit for each

classroom hour for research and preparation to the extent that the activity contribute to the professional competence of the registrant as determined by the Board. No credit will be awarded for repeated offerings of the same subject matter. The maximum credit toward meeting the continuing professional education requirement as an instructor or discussion leader shall not exceed 50% of the total requirement.

SEC. 109(e)-1(c)(6) - CONTROL AND REPORTING.

I. Each applicant for permit renewal shall provide a signed statement under penalty of perjury, disclosing the following information pertaining to the educational programs submitted in satisfaction of the continuing conducting courses:

1. school, firm or organization conducting course;
2. location of course;
3. title of course or description of content;
4. dates attended; and
5. hours claimed.

The Board may verify information submitted by applicants by requesting submission of the documentation to be retained by the applicant and/or sponsor and may revoke permits for which deficiencies exist. If a Continuing Professional Education Statement submitted by an applicant for permit renewal is not approved, or if upon verification, revocation is being considered, the applicant will be notified and may be granted a period of time in which to correct the deficiencies.

SEC. 109(e)-1(c)(7) - EVIDENCE OF COMPLETION - RETENTION.

Primary responsibility for documenting the requirements rest with the applicant. Evidence in support of the requirements should be retained for a period of five years after completion of the educational activity.

Sufficiency of evidence includes retention of course outlines and such signed statements of attendance as may be furnished by the sponsor under Sec. 109(e)-1(c)(2).

For courses taken for scholastic credit in accredited universities or colleges, evidence of satisfactory completion of the course will satisfy the course outline and attendance record.

For non-credit courses at accredited universities or colleges, a statement of the hours of attendance signed by the instructor or an authorized official of the sponsoring institution, must be obtained and retained by the applicant. Course outlines may be retained by the sponsoring institution for a period of five years in lieu of retention of the outlines by the applicant.

SEC. 109(e)-1(c)(8) - COMPOSITION OF CONTINUING PROFESSIONAL EDUCATION.

The biennial continuing professional education

requirement shall include a minimum of 20 percent in accounting and/or auditing and a minimum of 20 percent in taxation and the remaining hours may be satisfied by general subject matters so long as they contribute to the professional competence of the individual practitioner. Such general subject matters include, but are not limited to, the following areas:

- Accounting
- Auditing
- Taxation
- Management Services
- Mathematics
- Statistics, Probability, and Quantitative Applications in Business Finance
- Production and Marketing
- Personnel Relations
- Business Management and Organization
- Computer Science
- Communication Arts
- Economics
- Business Law
- Social Environment of Business
- Specialized Areas of Industry
- Administrative Practice

SEC. 110(b)-1 - EVIDENCE REQUIRED.

The Board may require the applicant to submit evidence of having performed public accounting services for consideration. Such evidence may include, but is not limited to, affidavits from clients certifying that the applicant was engaged to perform and did perform public accounting services for consideration on or before June 30, 1985.

SEC. 111(b)-1 - PROVISIONAL PERMIT.

If the Board fails to grant or deny a Firm a permit to practice within 120 days following receipt of an application filed in proper form, the Board will issue a provisional permit for a period not to exceed ninety days, unless extended by the Board for additional 30 day periods. Any provisional permit shall expire upon issuance or denial of a permit.

SEC. 111(c)-1 - EXAMINATION REQUIREMENT.

A candidate for a permit under this section who has passed any part of the Uniform Certified Public Accountant Examination and who wishes to use these examination scores to become a certified public accountant in Delaware, must have complied with all regulations applicable to candidates for certification under this Chapter including Rules for Examination and Condition Status for subjects passed in this State.

SEC. 111(c)-2 - EDUCATION REQUIREMENTS.

Regulations regarding education requirements shall be

stated under Sec. 108(a)(3)-1 and its subsections, which are incorporated by reference herein.

SEC. 111(d)-1 - CPE REQUIREMENT.

All regulations under Sec. 109(e)-1 pertaining to the continuing professional education requirement for renewal of a permit to practice certified public accountancy shall be applicable to the continuing education requirement for renewal of a permit to practice public accountancy under this Section.

SEC. 112-1 - PRINCIPAL OF FIRM DEFINED

For purposes of this section, a principal of a firm is defined as any individual who has an equity interest in the firm.

SEC. 112(b)-1 - APPLICATION FOR PERMITS TO PRACTICE PUBLIC ACCOUNTANCY.

An application for a permit or renewal of a permit to practice public accountancy must be submitted on forms prescribed and provided by the Board.

SEC. 112(b)-2 - PROVISIONAL PERMIT.

If the Board fails to grant or deny a Firm a permit to practice within 120 days following receipt of an application filed in proper form, the Board will issue a provisional permit for a period not to exceed ninety days, unless extended by the Board for additional 30 day periods. Any provisional permit shall expire upon issuance or denial of a permit.

SEC. 113(a)-1 - RULES FOR EXAMINATIONS.

Applications to sit for the May or November Uniform Certified Public Accountant examination (CPA exam) or the May or November Society of Public Accountants Uniform State examination (NASPA exam) shall be submitted in completed form to the Board not later than March 1 or September 1, respectively. Filing shall include placing the application in the US mail, properly addressed to the mailing address of the Board, with sufficient US postage or hand delivery to the Board.

(a) Examinations shall be in writing, on paper furnished by the Board.

(b) Applicants are permitted to use pen, pencil, eraser and straight edge. The use of slide rules, electronic calculators and other mechanical devices is prohibited. (c) The CPA exam shall be in the subjects of accounting practice, auditing, accounting theory and business law. The NSPA examination shall be in the subjects of accounting practice, auditing, theory of accounts and commercial law. (d) At any examination, an applicant must prepare and submit to the Board papers on all required subjects for which he/she does not have current credit for certification or permit, whichever is applicable.

(e) Subject to the provisions of Section 113(b), the passing grade is 75.

(f) An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

(g) Applicants will be informed in writing of the results achieved in each examination. Information concerning an applicant's papers will not be given to anyone other than the applicant.

SEC. 113(b)-1(a) - PASSING GRADE.

SEC. 113(b)-1(a)-1 - UNIFORM CPA EXAMINATION.

An applicant for a CPA certificate who received a grade of 75 or higher in all four subjects at one examination, shall be deemed to have passed the Uniform Certified Public Accountant Examination. An applicant who is taking only the Practice and Auditing sections of the examination in order to apply for a Permit to Practice Public Accounting, who received a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA exam.

SEC. 113(b)-1(a)-2 - UNIFORM NSPA EXAMINATION.

An applicant who receives a grade of 75 or higher in all four subjects at one examination shall be deemed to have passed the NSPA examination.

SEC. 113(b)- 1(b) - CONDITION STATUS FOR SUBJECTS PASSED IN THIS STATE.

An applicant who sits for all required parts of either examination and who receives a grade of 75 or higher in one or more, but less than all subjects passed (attain conditional status) under the following circumstances:

(1) To attain conditional status, the applicant must obtain a grade of 75 or higher in two subjects (Accounting Practice being considered two subjects) and obtain a grade of at least 50 in all subjects not passed. This minimum grade requirement is waived if three subjects (Accounting Practice being considered one subject) are passed at a single examination.

(2) To add to conditional status, the applicant must obtain a grade of at least 50 in all subjects not passed. Although a grade of less than 50 prevents the applicant from adding to his/her conditional status, it alone does not remove or cancel conditional status previously attained.

(3) To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the attainment of conditional status. The conditional period may be extended at the discretion of the Board, if an applicant is unable to sit for a given examination because of health, military service or other circumstances generally beyond the applicant's

control.

(4) An applicant who fails to pass all subjects required during the 5 consecutive examinations following the attainment of conditional status, shall forfeit all credits and shall, upon application as a new applicant, be examined again in all subjects.

SEC. 113(b)-1(c) - TRANSFER OF CREDIT FOR SUBJECTS PASSED IN ANOTHER JURISDICTION.

An applicant who has passed one or more subjects of either examination in another jurisdiction will be permitted to transfer to this jurisdiction credit for the parts so passed under the following conditions provided all other regulations of Section 113(b) have been met:

(1) At the time he/she sat for the examination in the other jurisdiction, he/she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

(2) At the time he/she makes application to sit for the examination in Delaware, he/she meets all the requirements of the Delaware statute; and

(3) Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction, and all time requirements of Delaware conditional status will be applied to it.

(4) The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

(5) If an applicant has passed all subjects of either examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in writing, including a written explanation of why no certificate or permit was issued from the jurisdiction in which the final subject was successfully completed.

SEC. 114-1 - APPLICATION FOR RECIPROCAL OR TEMPORARY CERTIFICATE.

An application for a reciprocal certificate or temporary certificate must be submitted on forms prescribed and provided by the Board.

SEC. 116(a)-1 - EXCEPTED PRACTICES.

The offering or rendering of data processing services by mechanical or electronic means is not prohibited by this Section. However, the exception applies only to the processing of accounting data as furnished by client and does not include the classification or verification of such accounting data or the analysis of the resulting financial statement by other than mechanical or electronic equipment

not prohibited by this Section. The rendering of advice or assistance in regard to accounting controls, systems and procedures is exempt only as it pertains to the specific equipment or data processing service being offered. The exemption does not cover study and/or advice regarding accounting controls, systems and procedures in general. Persons, partnerships or corporations offering or performing data processing services or services connected with mechanical or electronic equipment are subject to all provisions of Chapter 1, Title 24 of the Delaware Code.

SEC. 118-1 - DISCIPLINARY RULES OF PROCEDURE.

Disciplinary proceedings against any certificate or permit holders shall be initiated by an aggrieved person or by the affirmative vote of 5 members of the Board for any cause described in Section 117 of Title 24 or for violation of any rule of professional conduct promulgated by the Board in Regulation Section 105(I)-1.

SEC. 118-2.

(a) Aggrieved persons shall initiate disciplinary proceedings by filing written charges with the Secretary of the Board. Such charges shall state matter-of-fact and shall be sworn to by the person filing them.

(b) Upon filing of such charge, for the purpose of determining whether a disciplinary hearing should be held, the Board shall assume all matters-of-fact stated therein to be true. If at least 5 members of the Board believe that the facts stated in the charges present a sufficient cause for disciplinary action the Board shall fix a time and place for a hearing on such charges.

(c) Any charge filed with the Board and any material related thereto, shall be kept in an investigatory file compiled for the purpose of enforcing Chapter 1 of Title 24. Such file shall be confidential until the Board determines that a disciplinary hearing is to be held on such charge.

SEC. 118-3.

(a) The Board shall initiate disciplinary proceedings upon affirmative vote of 5 members who believe that facts exist which warrant the initiation of disciplinary action.

(b) The facts constituting the basis for such Board action shall be reduced to writing and shall thereupon constitute the charge.

(c) The Board shall thereupon fix a time and place for a hearing on such charges.

SEC. 118-4.

A copy of the charges, a copy of the rules of professional conduct promulgated by the Board in Regulation Section 105(I)-1, a copy of the Board's disciplinary rules of procedure promulgated in Regulations of Section 118, and a notice of the time and place of hearing shall be personally served on the accused or sent by

registered or certified mail to his/her last known address at least 30 days before the date fixed for the hearing.

SEC. 118-5.

(a) Upon determination that a disciplinary hearing is to be held, the Board shall notify the Department of Justice at least 30 days prior to the date fixed for the hearing.

(b) The Board shall forward to the Department of Justice a copy of the charge and any other information contained in the files of the Board related to such charges.

SEC. 118-6.

(a) When requested by the Board, the Department of Justice shall act as prosecutor in a disciplinary hearing.

(b) If the Board does not make such a request of the department of Justice, the person filing the charge or an authorized representative may act as prosecutor.

(c) At least 30 days prior to the date set for a disciplinary hearing, the Board shall notify, in writing, the Department of Justice, the accused and the person filing the charge, as to whether the Department of Justice will be acting as prosecutor.

(d) In any disciplinary hearing, the prosecutor shall have the burden of proving the charges by a preponderance of the evidence.

SEC. 118-7.

(a) 5 members of the Board shall constitute a quorum for any disciplinary hearing.

(b) At all disciplinary hearings, the Board shall sit as a body. The President of the Board or any member of the he/she appoints shall preside.

(c) The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any disciplinary hearing.

SEC. 118-8.

All testimony at any disciplinary hearing shall be under oath.

SEC. 118-9.

Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

SEC. 118-10.

All disciplinary hearings shall be recorded by either electronic or stenographic means. If electronically tape recorded, the tape shall be retained by the Board for 5 years; if stenographically recorded, the stenographer shall retain the notes for 5 years. Any party may obtain a written transcript to be prepared at his/her expense from the Division of Business and Occupational Regulation at a price to be

determined by the Division. A copy of such transcript shall be filed with the Board.

SEC. 118-11.

At any disciplinary hearing, an accused individual shall have the right to appear in person or be represented by counsel, or both. A partnership or corporation may be represented at such hearing by a duly authorized representative of such partnership or corporation who shall be a partner or shareholder thereof and a permit holder of the State in good standing, or by counsel, or both.

SEC. 118-12.

(a) At any disciplinary hearing, the accused shall have the right to produce evidence and witnesses on his/her behalf and to cross-examine witnesses.

(b) The accused shall be entitled, upon application to the Board, to the issuance of subpoenas to compel the attendance of witnesses and production of documents on behalf of the accused.

SEC. 118-13.

(a) Any member of the Board may issue subpoenas to compel the attendance of witnesses and the production of documents.

(b) In case of disobedience to a subpoena, the Board, through the Department of Justice as its legal representative, may invoke the aid of any Court of this State in requiring the attendance and testimony of witnesses and the production of documentary evidence.

SEC. 118-14.

No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the accused shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

SEC. 118-15.

If the accused fails to appear at a disciplinary hearing, the Board may proceed to hear and determine the validity of the charges against the accused.

SEC. 118-16.

(a) Charges shall be sustained upon the affirmative vote of 5 members of the Board.

(b) Upon the sustaining of any such charges, the Board may suspend or revoke the certificate and/or permit of the accused or may warn, censure or reprimand the accused.

SEC. 118-17.

(a) Upon the conclusion of a disciplinary hearing, the Board shall issue a written

decision.

(b) Such decision shall be delivered personally or sent by registered or certified mail to the last known address of the accused, the aggrieved person who may have filed the charges heard, and the Department of Justice.

SEC. 119-1.

Any complainant or any person, partnership or corporation adversely affected by any action of the Board in denying, suspending, revoking or refusing to renew a certificate or permit, may appeal such action to the Superior Court of this State pursuant to Section 119 of Title 24.

SEC. 121-1.

For purposes of this Section, working papers do not properly include client records. In some instances, a permit holder's working papers may include data which should be part of the client's books and records, rendering the client's books and records incomplete. In such instances, that portion of the working papers containing such data constitutes part of the client's records and should be made available to the client upon request.

SEC. 122-1 - REGISTER.

The Board will publish, at least biennially, a booklet setting forth the Delaware Code relating to the Practice of Public Accountancy, the Regulations of the Board and a register containing the names arranged in alphabetical order and the address of each person, partnership or corporation holding a certificate or temporary certificate and/or permit to practice under this Chapter, the date of expiration of each temporary certificate and the code T.C. beside such temporary certificate number. The register may contain other matters as may be deemed advisable. The Board shall mail a copy, at least biennially, to each certificate and/or permit holder.

PROPOSED REGULATIONS

1.0 GENERAL PROVISIONS

1.1 Pursuant to 24 *Del.C.* Chapter 1, the Delaware Board of Accountancy ("the Board") is authorized to, and has adopted, these Rules and Regulations. The Rules and Regulations are applicable to all certified public accountants, public accountants, permit holders and applicants to the Board.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board's Administrative Assistant at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Ste. 203, Dover, Delaware 19904-2467, telephone (302) 739-4522. Requests to the Board may be directed to the same office.

1.3 The Board's President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the President's absence, the Board's Secretary shall preside at meetings and perform all duties usually performed by the President.

1.4 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.5 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board's duties.

1.6 The Board reserves the right to grant exceptions to the requirements of the Rules and Regulations upon a showing of good cause by the party requesting such exception, provided that the exception is not inconsistent with the requirements of 24 *Del.C.* Chapter 1.

1.7 Board members are subject to the provisions applying to "employees" in the "State Employees', Officers' and Officials' Code of Conduct," found at 29 *Del.C.* Chapter 58. No member of the Board shall: (1) serve as a peer reviewer in a peer review of a licensee; or (2) be an instructor in an examination preparation course or school or have a financial interest in such an endeavor.

2.0 PROFESSIONAL CONDUCT

2.1 A certified public accountant, or a public accountant holding a certificate or permit issued by this Board, agrees to comply with the Rules of Conduct contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants. All changes in the Rules and Interpretations made by the American Institute of Certified Public Accountants shall automatically be made a part of these Rules and Regulations unless specifically rejected by the Board.

3.0 USE OF DESIGNATIONS

3.1 Designation "Certified Public Accountant" and the Abbreviation "CPA" in the Practice of Certified or Public Accountancy:

3.1.1 Only the following individuals and entities may use the designation "certified public accountant", the abbreviation "CPA", and other designations which suggest that the user is a certified public accountant, in the practice of certified or public accountancy:

3.1.1.1 An individual who is registered with the Board and holds a certificate of certified public accountant and a current permit to practice.

3.1.1.2 A partnership, professional association or professional corporation composed of certified public accountants which is registered with the Board and holds a current firm permit to practice.

3.2 Designation "Certified Public Accountant" and the abbreviation "CPA" by certificate holders who do not maintain a permit to practice:

3.2.1 An individual who holds a certificate of certified public accountant but does not maintain a permit to practice may use the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery if:

3.2.1.1 The certificate of certified public accountant has not been suspended or revoked and is in good standing.

3.2.1.2 The individual does not engage in the practice of certified or public accountancy and does not offer to perform certified or public accountancy services.

3.2.1.3 The individual does not hold himself or herself out to be in the practice of certified or public accountancy when performing or offering to perform accounting, bookkeeping, tax or accounting-related matters.

3.2.1.4 The individual does not engage in solicitations or advertising, including listings and advertisements in phone directories, newspapers, or other media (including electronic), in which the individual uses the designation "certified public accountant" or the abbreviation "CPA".

3.2.1.5 The individual does not publicly display a certificate of certified public accountant to imply that he or she is licensed in the practice of certified or public accountancy or offering to perform certified or public accountancy services.

3.2.1.6 The individual is employed by a government, or an academic institution, corporation, or company not engaged in the practice of certified or public accountancy and uses the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery provided:

3.2.1.6.1 The business cards and stationery indicate the name of the employer and the title of the person; and

3.2.1.6.2 The business cards or stationery are not used to solicit certified or public accountancy services or accounting-related business.

3.2.2 An individual who holds a certificate of certified public accountant but not a permit to practice may not refer to his or her business as "John/Jane Doe, CPA" or have business cards imprinted "John/Jane Doe, CPA, and Company or Institution, Title" with the intent to offer certified or public accountancy services.

3.2.3 An individual who holds a certificate of certified public accountant, but not a permit to practice, may not perform a service related to accounting, including bookkeeping and tax returns, while holding him or herself out as a certified public accountant without a permit to practice. Similarly, an individual may not prepare income tax returns and refer to his or her business or sign tax returns as "John/Jane Doe, CPA" without a permit to practice. Such individual may put up a sign reading "John/Jane Doe, Tax Preparer" and prepare and sign tax returns as "John/Jane

Doe".

3.3 Designation "Public Accountant" and the abbreviation "PA"

3.3.1 Only the following individuals and entities may use the designation "public accountant," the abbreviation "PA", and other designations which suggest that the user is a public accountant, in the practice of public accountancy.

3.3.1.1. An individual who is registered with the Board and holds a permit to practice public accountancy in good standing.

3.3.1.2. A partnership, professional association or professional corporation composed of public accountants which is registered with the Board and holds a current firm permit in good standing to practice public accountancy.

3.3.2 An individual may not refer to his or her business or sign tax returns as "John/Jane Doe, PA" without a permit to practice public accountancy.

3.4 No person, partnership, or corporation shall hold him/her/itself or otherwise use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", "licensed public accountant", "registered public accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant", or any other abbreviations of any prohibited titles or designations likely to be confused with "CPA" or "PA". It is not a violation of this clause for an individual conferred by the Internal Revenue Service as an enrolled agent to use that title or the abbreviation "EA".

3.5 No person, partnership, or corporation shall use a title or specialized designation that includes the word "accredited" or "certified" or an abbreviation of such a title or designation or otherwise claim a qualification unless that designation has been conferred by a bona fide organization after evaluation of the individual's credentials and competencies. This includes such designations as "CFP", "CVA", "ABV", etc.

4.0 APPLICATIONS

4.1 An application for examination, certificates, permits to practice and renewals of permits to practice shall be submitted on forms approved by the Board.

4.2 The Board may require additional information or explanation when it has questions about an applicant's qualifications or application materials. An application is not complete or in proper form until the Board has received all required and requested documents, materials, information and fees.

5.0 EXAMINATION AND CERTIFICATE REQUIREMENTS

5.1 Each applicant for a certificate must provide the Board with the following:

5.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 *Del.C.* §107(a)(1).

5.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination.

5.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

5.1.4 Evidence in a form satisfactory to the Board that the applicant holds a Master's Degree, a Baccalaureate Degree or an Associate Degree, with a concentration in accounting.

5.1.4.1 The applicant also must, upon request, submit proof that the college or university granting the degree was, at the time of the applicant's graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional accrediting association. A degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. regional accreditation.

5.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate, Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

5.1.4.3 Except for applicants applying under Section 5.2 of these Rules and Regulations, the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by the final date for accepting applications for the examination at which the applicant intends to sit.

5.2 Applicants requesting to sit for the the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of Sections 5.1.1 and 5.1.4 of these Rules and Regulations. An applicant who expects to meet the education requirements of Section 5.1.4

within 120 days following the examination is eligible to take the examination provided he or she:

5.2.1 meets the character requirements of Section 5.1.1; and

5.2.2 provides evidence satisfactory to the Board that he or she is expected to complete the education requirements within 120 days of the examination.

6.0 REQUIREMENTS FOR PERMIT TO PRACTICE CERTIFIED PUBLIC ACCOUNTANCY

6.1 For purposes of Section 6.0 of these Rules and Regulations, the term "certificate holder" shall be defined as the holder of a certificate of certified public accountant issued by any jurisdiction.

6.2 Each applicant for a permit to practice certified public accountancy must provide the Board with the following:

6.2.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board;

6.2.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice;

6.2.3 Evidence in a form satisfactory to the Board that the applicant holds a valid certificate; and

6.2.4 Evidence in a form satisfactory to the Board that the applicant meets the experience requirements provided in 24 *Del.C.* §108(c)(2) and Sections 6.3, 6.4 and 6.5 of these Rules and Regulations, as applicable.

6.3 Applicants who seek a permit based on their experience as an employee of a firm engaged in the practice of certified public accountancy shall meet the following standards and requirements:

6.3.1 The distinguishing characteristic of practice as a certified public accountant is the requirement that the practitioner compile, review or audit all financial statements with which his or her name is associated. Accordingly, the applicant shall submit evidence of extensive experience obtained in engagements, resulting in the issuance of financial statements including appropriate footnote disclosure and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants. Such experience must be obtained under the supervision of a certified public accountant who holds a valid permit to practice certified public accountancy.

6.3.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area (audits, reviews, taxes) and

stating the approximate time devoted to each, and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

6.3.3 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

6.4 Applicants who seek a permit based on their experience in government or industry shall meet the following standards and requirements:

6.4.1 The applicant shall submit a detailed description of the education and experience requirements of entry to his or her job, a detailed description of his or her duties and responsibilities over the entire period of time relied on to meet the experience qualification, a detailed description of the reporting requirements of his or her job, and a statement of the training opportunities in which the applicant has participated. The employment submitted as qualifying experience must include extensive experience resulting in the preparation and issuance of financial statements, including appropriate footnote disclosures, and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants. Such experience must be obtained under the direct supervision of a certified public accountant who holds a valid permit to practice certified public accounting.

6.4.2 Each applicant must submit an affidavit from each supervising CPA with whom qualifying experience is claimed, setting forth the dates of employment and verifying the applicant's statement of his or her duties and responsibilities.

6.4.3 Each application under this subsection will be considered on its own merits and the Board will evaluate the applicant's experience, as set forth in the application materials, for the purpose of determining whether it is substantially equivalent to experience as an employee of a firm engaged in the practice of certified public accountancy.

Such experience may be prorated at less than 100% equivalence.

6.5 Applicants who seek a permit based on their experience in the practice of public accountancy shall meet the following standards and requirements:

6.5.1 The distinguishing characteristic of practice as a public accountant is the requirement that the practitioner compile, review or audit all financial statements with which his or her name is associated. Accordingly, the applicant shall submit evidence of extensive experience obtained in engagement, resulting in the preparation and issuance of financial statements prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.5.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, or from the applicant himself or herself where the qualifying experience is claimed as an owner or principal of a firm engaged in the practice of public accountancy. Each affidavit shall include the dates of employment, describe the nature of the applicant's duties, state the approximate time devoted to each, and affirm that the applicant discharged his or her duties in a competent and professional manner. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his or her qualifying experience.

6.5.3 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

7.0 REQUIREMENTS FOR PERMIT TO PRACTICE PUBLIC ACCOUNTANCY

7.1 Each applicant for a permit to practice public accountancy must provide the Board with the following:

7.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 *Del.C.* §107(a)(1).

7.1.2 Evidence in a form satisfactory to the Board that the applicant holds, as a minimum, an associate degree with a concentration in accounting. The provisions of Sections 5.1.4.1 and 5.1.4.2 of these Rules and Regulations also apply to applicants for permits to practice public accountancy.

7.1.3 Evidence in a form satisfactory to the Board

that the applicant has successfully passed the accounting examination given by the Accreditation Council for Accountancy & Taxation, which is the examination recognized by the National Society of Public Accountants, or both the Accounting and Reporting and the Auditing portions of the Uniform Certified Public Accounting Examination.

7.1.4 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

7.1.5 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board.

7.1.6 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a permit to practice.

8.0 RECIPROCITY

8.1 An applicant seeking a permit to practice through reciprocity shall demonstrate that he or she meets requirements of 24 *Del.C.* §109(a) and must provide the Board with the following:

8.1.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board; and

8.1.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice.

8.2 The provisions of Section 6.3 of these Rules and Regulations shall also apply to the experience required by 24 *Del.C.* §109 (a) (3) for the granting of a permit by reciprocity.

8.3 An applicant seeking a certificate through reciprocity shall demonstrate that he or she meets the requirements of 24 *Del.C.* §114 and must provide the Board with the following:

8.3.1 A certified statement from the licensing authority, or comparable agency, of the jurisdiction through which the applicant seeks reciprocity that the applicant holds a valid certificate with no past or pending disciplinary proceedings or complaints against him or her; and

8.3.2 Copies of the law and rules or regulations establishing the requirements for certification in the jurisdiction through which the applicant seeks reciprocity.

9.0 FIRM PERMITS TO PRACTICE

9.1 For purposes of 24 *Del.C.* §111 and this Section of the Rules and Regulations, the term “principal of a firm” is defined as any individual who has an equity interest in the firm.

9.2 Certified public accounting and public accounting firms practicing as corporations must be organized as professional corporations (“P.C.”) or professional associations (“P.A.”) in compliance with The Professional Service Corporation Act, 8 *Del. C.* Sec. 671, *et. seq.*

9.3 Individuals not currently practicing certified public accountancy or public accountancy shall not be required to obtain a firm permit to practice until such a time as that person begins to perform certified public accounting or public accounting services.

9.4 Certified public accounting and public accounting firms may not practice using firms names that are misleading as to organization, scope, or quality of services provided.

10.0 CONTINUING EDUCATION

10.1 Hours Required: Each permit holder must have completed at least 80 hours of acceptable continuing professional education each biennial reporting period of each year ending with an odd number. The eighty hours of acceptable continuing professional education submitted must have been completed in the immediately preceding two-year period.

10.2 Reporting Requirements: The Board will mail permit renewal forms which provide for continuing professional education reporting to all permit holders. Each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board at least 60 days prior to the permit renewal date set by the Division of Professional Regulation.

10.3 Proration: Prorated continuing professional education regulations consisting of less than eighty hours shall only apply to the first permit renewal, thereafter all permit holders are required to complete at least eighty hours of acceptable continuing professional education biennially.

10.3.1 If the initial permit was issued less than one year prior to the renewal date, there shall be no continuing education requirement for that period.

10.3.2 If the initial permit was issued at least one year, but less than two years prior to the renewal date, the continuing education requirement shall be 40 hours for that period.

10.4 Exceptions: The Board has the authority to make exceptions to the continuing professional education requirements for reasons including, but not limited to, health, military service, foreign residency, and retirement.

10.5 Qualified Programs.

10.5.1 General Determination: The overriding consideration in determining if a specific program qualifies

as a continuing professional education program is whether it is a formal program of learning which contributes directly to the professional competence of the permit holder.

10.5.2 Formal Programs: Formal programs requiring class attendance will qualify only if:

10.5.2.1 An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years or the outline is provided to the participant or both.

10.5.2.2 The program is at least an hour (a fifty-minute period) in length.

10.5.2.3 The program is conducted by a qualified instructor or discussion leader.

10.5.2.4 A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

10.5.3 Programs deemed approved: Provided the criteria in Sections 10.5.1 and 10.5.2 of these Rules and Regulations are met, the following are deemed to qualify for continuing professional education:

10.5.3.1 Programs approved by National Association of State Boards of Accountancy (NASBA);

10.5.3.2 Professional development programs of national, state and local accounting organizations.

10.5.3.3 Technical sessions at meeting of national, state and local accounting organizations and their chapters.

10.5.3.4 University or college courses:

10.5.3.4.1 Credit courses: each semester hour credit shall equal 5 hours of continuing professional education.

10.5.3.4.2 Non-credit courses: each classroom hour shall equal one hour of continuing professional education.

10.5.3.5 Programs of other organizations (accounting, industrial, professional, etc.)

10.5.3.6 Other organized educational programs on technical and other practice subjects including “in-house” training programs of public accounting firms.

10.5.4 Correspondence and Individual Study Programs: Formal correspondence or other individual study programs which provide evidence of satisfactory completion will qualify, with the amount of credit to be determined by the Board. The Board will not approve any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The maximum credit toward meeting the continuing professional education requirement with formal correspondence or other individual study programs shall not exceed 30% of the total requirement.

10.5.5 Instructors and Discussion Leaders: Credit for one hour of continuing professional education will be awarded for each hour completed as an instructor or discussion leader plus two additional hours of credit for each classroom hour for research and preparation to the extent

that the activity contributes to the professional competence of the registrant as determined by the Board. No credit will be awarded for repeated offerings of the same subject matter. The maximum credit toward meeting the continuing professional education requirement as an instructor or discussion leader shall not exceed 50% of the total requirement.

10.5.6 Published Articles and Books: One hour credit will be granted for each 50 minute period of preparation time on a self-declaration basis to a maximum of 20 hours in each biennial reporting period. A copy of the published article must be submitted to the Board upon request.

10.5.7 Committee, Dinner, Luncheon and Firm Meetings. One hour credit will be granted for each 50 minutes of participation. Credit will only be granted for those meetings which are structured as a continuing education program.

10.6 Control and Reporting

10.6.1 Each applicant for permit renewal shall provide a signed statement under penalty of perjury, disclosing the following information pertaining to the educational programs submitted in satisfaction of the continuing education requirements:

10.6.1.1 school, firm or organization conducting course;

10.6.1.2 location of course;

10.6.1.3 title of course or description of content;

10.6.1.4 dates attended; and

10.6.1.5 hours claimed.

10.6.2 The Board may verify information submitted by applicants by requesting submission of the documentation to be retained by the applicant and/or sponsor and may revoke permits for which deficiencies exist. If a Continuing Professional Education Statement submitted by an applicant for permit renewal is not approved, or if upon verification, revocation is being considered, the applicant will be notified and may be granted a period of time in which to correct the deficiencies.

10.7 Evidence of Completion- Retention

10.7.1 Primary responsibility for documenting the requirements rest with the applicant. Evidence in support of the requirements should be retained for a period of five years after completion of the educational activity.

10.7.2 Sufficiency of evidence includes retention of course outlines and such signed statements of attendance as may be furnished by the sponsor.

10.7.3 For courses taken for scholastic credit in accredited universities or colleges, evidence of satisfactory completion of the course will satisfy the course outline and attendance record.

10.7.4 For non-credit courses at accredited universities or colleges, a statement of the hours of

attendance signed by the instructor or an authorized official of the sponsoring institution, must be obtained and retained by the applicant. Course outlines may be retained by the sponsoring institution for a period of five years in lieu of retention of the outlines by the applicant.

10.8 Composition of Continuing Professional Education: The biennial continuing professional education requirement shall include a minimum of 20 percent in accounting and/or auditing and a minimum of 20 percent in taxation and the remaining hours may be satisfied by general subject matters so long as they contribute to the professional competence of the individual practitioner. Such general subject matters include, but are not limited to, the following areas:

Accounting

Auditing

Taxation

Management Services Mathematics, Statistics, Probability, and Quantitative Applications in Business

Finance, Production and Marketing

Personnel Relations, Business Management and Organization

Computer Science

Communication Arts

Economics

Business Law

Social Environment of Business

Specialized Areas of Industry

Administrative Practice

11.0 ADDITIONAL PROVISIONS CONCERNING EXAMINATIONS

11.1 All examinations required under 24 *Del.C.* Chapter 1 and these Rules and Regulations shall be graded by the applicable grading service of the organization offering the examination.

11.2 Applications to sit for the May or November Uniform Certified Public Accountant examination ("CPA examination") shall be submitted in completed form to the Board's designated agent by the dates determined by the Board's designated agent.

11.3 The CPA examination shall be in the subjects of accounting and reporting, financial accounting and reporting, auditing, and business law, and in such other or additional subjects that may be covered in successor examinations as may be required to qualify for a certificate.

11.4 Rules for Examination.

11.4.1 Examinations shall be in writing.

11.4.2 Applicants are permitted to use pencil and eraser. Calculators provided at the exam site are the only mechanical devices allowed.

11.4.3 At any examination, an applicant must prepare and submit to the Board papers on all required

subjects for which he or she does not have current credit for certification or permit, whichever is applicable.

11.4.4 An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

11.4.5 Applicants will be informed in writing of the results achieved in each examination.

11.5 Passing Grade on the Uniform CPA Examination

11.5.1 An applicant for a certificate who receives a grade of 75 or higher in all four subjects at one examination shall be deemed to have passed the Uniform Certified Public Accountant Examination.

11.5.2 An applicant who is taking only the Accounting and Reporting (ARE) and Financial Accounting and Reporting (FARE) sections of the CPA examination in order to apply for a permit to practice public accounting, who receives a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA examination.

11.6 Conditional Status for Subjects passed in this State

11.6.1 An applicant who sits for all required parts of either examination and who receives a grade of 75 or higher in one or more, but less than all subjects passed may attain conditional status under the following circumstances:

11.6.1.1 To attain conditional status, the applicant must obtain a grade of 75 or higher in two subjects and obtain a grade of at least 50 in all subjects not passed. This minimum grade requirement is waived if three subjects are passed at a single examination.

11.6.1.2 To add to conditional status, the applicant must obtain a grade of at least 50 in all subjects not passed. Although a grade of less than 50 prevents the applicant from adding to his or her conditional status, it alone does not remove or cancel conditional status previously attained.

11.6.1.3 To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the attainment of conditional status. The conditional period may be extended at the discretion of the Board, if an applicant is unable to sit for a given examination because of health, military service or other circumstances generally beyond the applicant's control.

11.6.1.4 An applicant who fails to pass all subjects required during the 5 consecutive examinations following the attainment of conditional status, shall forfeit all credits and shall, upon application as a new applicant, be examined again in all subjects.

11.7 Transfer of Credit for Subjects Passed in Another Jurisdiction

11.7.1 An applicant who has passed one or more subjects of either examination in another jurisdiction will be permitted to transfer to this jurisdiction credit for the parts so

passed under the following conditions, and provided the requirements of Section 11.6 of these Rules and Regulations have been met:

11.7.1.1 At the time he or she sat for the examination in the other jurisdiction, he or she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

11.7.1.2 At the time he or she makes application to sit for the examination in Delaware, he or she meets all the requirements of the Delaware statute and regulations; and

11.7.1.3 Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction, and all time requirements of Delaware conditional status will be applied to it.

11.7.2 The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

11.7.3 If an applicant has passed all subjects of either examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in writing. The Board may require a written explanation of why no certificate or permit was issued from the jurisdiction in which the final subject was successfully completed.

12.0. EXCEPTED PRACTICES; WORKING PAPERS

12.1. Excepted Practices: The offering or rendering of data processing services by mechanical or electronic means is not prohibited by 24 *Del.C.* §115. However, the exception applies only to the processing of accounting data as furnished by the client and does not include the classification or verification of such accounting data or the analysis of the resulting financial statement by other than mechanical or electronic equipment not prohibited by this Section. The rendering of advice or assistance in regard to accounting controls, systems and procedures is exempt only as it pertains to the specific equipment or data processing service being offered. The exemption does not cover study and/or advice regarding accounting controls, systems and procedures in general. Persons, partnerships or corporations offering or performing data processing services or services connected with mechanical or electronic equipment are subject to all provisions of 24 *Del.C.* Chapter 1.

12.2 Working Papers: For purposes of 24 *Del.C.* §120, the term "working papers" does not properly include client records. In some instances, a permit holder's working papers may include data which should be part of the client's books and records, rendering the client's books and records incomplete. In such instances, that portion of the working

papers containing such data constitutes part of the client's records and should be made available to the client upon request.

13.0 HEARINGS

13.1 Disciplinary proceedings against any certificate or permit holder may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 *Del. C.* §8807(h)(1)-(3).

13.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

13.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

13.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

13.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 *Del. C.* Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

13.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. A partnership or corporation may be represented at such hearing by a duly authorized representative of such partnership or corporation who shall be a partner or shareholder thereof and a permit holder of the State in good standing, or by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

13.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the accused shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

13.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29

Del. C. §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

13.2. General procedure

13.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

13.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

13.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practical.

13.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing at least three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10027 (3 *Del. C.* 10027)

The Delaware Harness Racing Commission has proposed twenty-four revisions to its existing rules. The Commission proposes these amendments pursuant to 3 *Del. C.* §10027 and 29 *Del. C.* §10113.

The Commission will accept written comments from the public from January 1, 2000 through January 30, 2000. The Commission will also conduct a public hearing on the proposed amendments on January 26, 2000 at 10:00 a.m. at Dover Downs, Dover, DE 19901. Copies of the proposed amendments and the existing rules can be obtained from John Wayne, Administrator of Racing, 2320 S. DuPont Street, Dover, DE 19901. Written comments should also be directed to Mr. Wayne's attention at the above address.

The following is a summary of the proposed rule amendments:

1. Amend Rule 6.3.3.13 by striking the existing first sentence and substituting a provision that claimed horses may be tested post race at the request of the claimant.
2. Amend Rule 6.3.3.13 to provide that a claimed horse may not race until the Commission chemist issues a forensic analysis of the post race sample from the horse.
3. Amend Rule 6.3.3.15 to require that claimed horses race in Delaware for a period of 60 days unless released by

the Racing Secretary.

4. Amend Rule 7.1.3.6 by deleting the requirement that a horse qualify if it is distanced for reasons other than interference, broken equipment, or breaking stride.

5. Amend Rule 7.6.5.2 to delete the requirement of one or two preliminary scores before the start of the race.

6. Amend Chapter 8.0 by striking the phrases "State veterinarian" and "State Veterinarian" and substituting the phrase "Commission veterinarian".

7. Amend Rule 8.3 to delete the last three sentences in the existing rule concerning duties of the State Steward in assessing medication and foreign substance violation and inserting the language in Rule 8.3.2.

8. Amend Rule 8.3 by inserting an introductory sentence stating that no horse shall carry a foreign substance at the time of the race except as permitted by rule.

9. Amend Rule 8.3 to permit either the State Steward or other designee of the Commission to impose penalties for violation of the prohibited drug or substance rules.

10. Amend Rule 8.3.2 to require the State Steward to consult with the State Veterinarian before imposing a medication violation penalty. Amend Rule 8.3.2 to require the State Steward or Commission designee to consider aggravating and mitigating circumstances before imposing a medication violation penalty. Amend Rule 8.3.2 to permit the State Steward or Commission designee to prohibit a horse that tested positive from racing pending a timely hearing.

11. Amend a Rule 8.3.2.4 and Rule 8.3.2.5 to implement new recommended penalties for Class 4 and 5 substances.

12. Amend Rule 8.3.3.1.2 to provide that drugs or medications are permissible provided the maximum permissible urine or blood concentration does not exceed a limit established by the Commission.

13. Amend Rule 8.3.3.2 to prohibit the administration of prohibited drugs or substances to a horse within 24 hours of a race.

14. Amend Rule 8.3.3.3.1 to further define "prohibited substances" to include drugs or medications for which no acceptable levels have been established in the Commission rules or otherwise approved and published by the Commission.

15. Amend Rule 8.3.3.3.2 to further define "prohibited substances" to include therapeutic medications in excess of acceptable limits established or approved and published by the Commission.

16. Amend Rule 8.3.3.3.3 to delete the phrase "procedures to be established by the Commission" and substituting the phrase "such procedures as may be established from time to time by the Commission".

17. Amend Rule 8.3.3.3.3 to provide that positive tests for excess carbon dioxide shall be penalized as a Class 2 violation.

18. Amend Rule 8.3.5.7 to renumber the existing Rule to include new subsections Rule 8.3.5.7.2.3 and Rule 8.3.5.7.2.4 to establish a penalty schedule for furosemide overages.

19. Amend Rules 8.3.6 and 8.3.7 by renumbering them 8.3.5.9 and 8.3.5.10. Amend Rule 8.3.6 to enact a new Rule to establish acceptable phenylbutazone levels and to establish a penalty schedule for phenylbutazone overages.

20. Amend Rule 8.3.6.4 by providing that the penalty schedule for horses that bleed are limited to a twelve month period.

21. Amend Rule 8.4.1.1 to revise the procedure for post-racing testing to test at least one horse in each race and to test any claimed horse at the request of the claimant.

22. Amend Rule 8.4.3.5.10 to exempt carbon dioxide test samples from the split sample procedure.

22A Amend Rule 8.4.3.5.10 to provide that there shall be no right to a split sample for carbon dioxide samples unless an initial positive test is made at the racetrack on the day of the race and the secondary sample must be tested at a Commission designated laboratory..

23. Amend Rule 8.5.2 on trainer responsibility to require a trainer to prevent the administration of "foreign" instead of "prohibited substances".

24. Amend the trainer responsibility rule to add a new Rule 8.5.5.17 to require a trainer to report the death of any horse drawn in to start in a race when the death occurs within 60 days of the draw.

6.3 Claiming Races

6.3.1 General Provisions

6.3.1.1 No horse will be eligible to start in a claiming race unless the owner has provided written authorization, which must include the minimum price for which the horse may be claimed, to the racing secretary at least one hour prior to post time of its race. If the horse is owned by more than one party, all parties must sign the authorization. Any question relating to the validity of a claiming authorization shall be referred to the judges who shall have the authority to disallow a declaration or scratch the horse if they deem the authorization to be improper.

6.3.1.2 Except for the lowest claiming price offered at each meeting, conditions and allowances in claiming races may be based only on age and sex. Whenever possible, claiming races shall be written to separate horses five years old and up from young horses and to separate males from females. If sexes are mixed, mares shall be given a price allowance; provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race.

6.3.1.3 Registration certificate in current ownership, together with the application for transfer thereon duly endorsed by all registered owners, must be filed in the office of the racing secretary for all horses claimed within a

reasonable time after the race from which the horse was claimed.

6.3.1.4 The price allowances that govern for claiming races must be approved by the Commission. Claiming prices recorded on past performance lines in the daily race program and on eligibility certificates shall not include allowances.

6.3.1.5 The claiming price, including any allowances, of each horse shall be printed on the official program adjacent to the horse's program number and claims shall be for the amount designated, subject to correction if printed in error.

6.3.1.6 In handicap claiming races, in the event of an also eligible horse moving into the race, the also eligible horse shall take the place of the horse that it replaces provided that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap, except when the horse that is scratched is a trailing horse, in which case the also eligible horse shall take the trailing position, regardless of its handicap. In handicap claiming races with one trailer, the trailer shall be determined as the fourth best post position.

6.3.1.7 To be eligible to be claimed a horse must start in the event in which it has been declared to race, except as provided in 6.3.1.8 of this subsection.

6.3.1.8 The successful claimant of a horse programmed to start may, at his option, acquire ownership of a claimed horse, even though such claimed horse was scratched and did not start in the claiming race from which it was scratched. The successful claimant must exercise his/her option by 9:00 a.m. of the next day following the claiming race to which the horse was programmed and scratched. Upon notification that the successful claimant has exercised his/her option, the owner shall present the horse for inspection, and the claim shall not be final until the successful claimant has had the opportunity to inspect the horse. No horse may be claimed from a claiming race unless the race is contested.

6.3.1.9 Any licensed owner or the authorized agent of such person who holds a current valid Commission license may claim any horse or any person who has properly applied for and been granted a claiming certificate shall be permitted to claim any horse. Any person or authorized agent eligible to claim a horse shall be allowed access to the grounds of the association, excluding the paddock, in order to effect a claim at the designated place of making claims and to take possession of the horse claimed.

6.3.1.10 Claiming certificates are valid on day of issue and expire at the end of the race meeting for which it was granted. These certificates may be applied for at the office designated by the association prior to post time on any day of racing.

6.3.1.11 There shall be no change of ownership or

trainer once a horse is programmed.

6.3.2 Prohibitions on Claims

6.3.2.1 A person shall not claim directly or indirectly his/her own horse or a horse trained or driven by him/her or cause such horse to be claimed directly or indirectly for his/her own account.

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly attempt to prevent another person from claiming any horse in a claiming race.

6.3.2.3 A person shall not have more than one claim on any one horse in any claiming race.

6.3.2.4 A person shall not directly or indirectly conspire to protect a horse from being claimed by arranging another person to lodge claims, a procedure known as protection claims.

6.3.2.5 No qualified owner or his agent shall claim a horse for another person.

6.3.2.6 No person shall enter in a claiming race a horse against which there is a mortgage, bill or sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the Clerk of the Course of the association conducting such claiming race.

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful claimant seeking to void the claim must file a petition to void said claim with the judges within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned.

1 DE Reg. 503 (01/11/97)

6.3.3 Claiming Procedure

6.3.3.1 A person desiring to claim a horse must have the required amount of money, in the form of cash or certified check, on deposit with the association at the time the completed claim form is deposited. Such deposit also may be made by wire transfer prior to 2:00 p.m. on the day of the claiming race.

6.3.3.2 The claimant shall provide all information required on the claim form provided by the association.

6.3.3.3 The claim form shall be completed and signed by the claimant prior to placing it in an envelope

provided for this purpose by the association and approved by the Commission. The claimant shall seal the envelope and identify on the outside the date, time of day, race number and track name only.

6.3.3.4 The envelope shall be delivered to the designated area, or licensed delegate, at least fifteen (15) minutes before post time of the race from which the claim is being made. That person shall certify on the outside of the envelope the time it was received, the current license status of the claimant and whether credit in the required amount has been established.

6.3.3.5 It shall be the responsibility of the association to ensure that all such claim envelopes are delivered unopened or otherwise undisturbed to the judges prior to the race from which the claim is being made. The association shall provide for an agent who shall, immediately after closing, deliver the claim to the judges' stand.

6.3.3.6 The claim shall be opened and the claims, if any, examined by the judges prior to the start of the race. The association's auditor, or his/her agent, shall be prepared to state whether the claimant has on deposit, the amount equivalent to the specified claiming price and any other required fees and taxes.

6.3.3.7 The judges shall disallow any claim made on a form or in a manner which fails to comply with all requirements of this rule.

6.3.3.8 Documentation supporting all claims for horses, whether successful or unsuccessful, shall include details of the method of payment either by way of a photostatic copy of the check presented, or written detailed information to include the name of the claimant, the bank, branch, account number and drawer of any checks or details of any other method of payment. This documentation is to be kept on file at race tracks for three (3) years and is to be produced to the Commission for inspection at any time during the period.

6.3.3.9 When a claim has been lodged it is irrevocable, unless otherwise provided for in these rules.

6.3.3.10 In the event more than one claim is submitted for the same horse, the successful claimant shall be determined by lot by the judges, and all unsuccessful claims involved in the decision by lot shall, at that time, become null and void, notwithstanding any future disposition of such claim.

6.3.3.11 Upon determining that a claim is valid, the judges shall notify the paddock judge of the name of the horse claimed, the name of the claimant and the name of the person to whom the horse is to be delivered. Also, the judges shall cause a public announcement to be made.

6.3.3.12 Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to

have started, and the successful claimant shall become the owner of the horse, whether it be alive or dead, or sound or unsound, or injured during or after the race. If a horse is claimed out of a heat or dash of an event having multiple heats or dashes, the judges shall scratch the horse from any subsequent heat or dash of the event.

6.3.3.13 ~~A post-race urinalysis test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race urine sample is collected. Any claimed horse not otherwise selected for testing by the State Steward or judges shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these rules.~~ The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance or an illegal level of a permitted medication. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation, and, until the Commission chemist issues a report on his forensic analysis of the samples taken from the horse, the claimed horse shall not be permitted to be entered to race.

6.3.3.14 Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended, together with the horse, until delivery is made.

6.3.3.15 A claimed horse shall not be eligible to start in any race in the name or interest of the owner of the horse at the time of entry for the race from which the horse was claimed for thirty (30) days, unless reclaimed out of another claiming race. Nor shall such horse remain in or be returned to the same stable or care or management of the first owner or out of another claiming race. Further, such horse shall be required to continue to race at the track where claimed for a period of ~~45~~ 60 days or the balance of the current racing meet, whichever comes first, unless released by the Racing Secretary.

2 DE Reg. 1765 (01/01/98)

6.3.3.16 The claiming price shall be paid to the owner of the horse at the time entry for the race from which the horse was claimed only when the judges are satisfied that the successful claim is valid and the registration and eligibility certificates have been received by the racing secretary for transfer to the new owner.

6.3.3.17 The judges shall rule a claim invalid:

6.3.3.17.1 at the option of the claimant if the official racing chemist reports a positive test on a horse that was claimed, provided such option is exercised within 48 hours following notification to the claimant of the positive test by the judges;

2 DE Reg. 1243 (01/01/99)

6.3.3.17.2 if the horse has been found ineligible to the event from which it was claimed, regardless of the position of the claimant.

2 DE Reg. 1243 (01/01/99)

6.3.3.18 Mares and fillies who are in foal are ineligible to claiming races. Upon receipt of the horse, if a claimant determines within 48 hours that a claimed filly or mare is in foal, he/she may, at their option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

6.3.3.19 When the judges rule that a claim is invalid and the horse is returned to the owner of the horse at the time of entry for the race in which the invalid claim was made:

6.3.3.19.1 the amount of the claiming price and any other required fees and/or taxes shall be repaid to the claimant;

6.3.3.19.2 any purse monies earned subsequent to the date of the claim and before the date on which the claim is ruled invalid shall be the property of the claimant; and

6.3.3.19.3 the claimant shall be responsible for any reasonable costs incurred through the care, training or racing of the horse while it was in his/her possession.

7.1 Declarations and Drawing**7.1.1 Declarations**

7.1.1.1 Unless otherwise specified in the conditions, the declaration time shall be as follows:

7.1.1.1.1 Extended pari-mutuel meetings, 9:00 a.m.

7.1.1.1.2 All other meetings, 10:00 a.m.

7.1.1.2 The time when declarations close will be considered to be local time at the track where the race is being contested.

7.1.1.3 No horse shall be permitted to start in more than one race on any one racing day. Races decided by more than one heat are considered a single race.

7.1.1.4 The association shall provide a locked box with an aperture through which declarations shall be deposited.

7.1.1.5 The Presiding Judge shall be in charge of the declaration box.

7.1.1.6 Just prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the Presiding Judge shall check with the racing secretary to ascertain if any declarations by mail, telegraph, facsimile machine or otherwise, are in the office and not deposited in the entry box, and shall see that they are declared and drawn in the proper event. At other meetings, the Presiding Judge shall ascertain if any such declarations have been received by the speed superintendent or racing secretary of the fair, and shall see that they are properly declared and drawn.

7.1.2 Drawing

7.1.2.1 The entry box shall be opened at the advertised time by the Presiding Judge, who shall ensure that

at least one horseman or an official representative of the horsemen is present. No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the Presiding Judge, all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

7.1.2.2 Subject to Commission approval, at non-extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges, or by a person designated by the Presiding Judge, for whose acts and conduct Presiding Judge shall be wholly responsible. If a substitution is made as herein provided, the name and address of the associate judge(s) or person so substituting shall be entered in the Judges' Book.

At extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges who shall have been designated by the Presiding Judge, prior to the start of the meeting, in the form of a written notice to the Commission and to the association conducting the meeting. A record shall be kept in the Judges' Book showing the name of the individual who performed such functions on each day of the meeting.

7.1.2.3 In races of a duration of more than one dash or heat at pari-mutuel meetings, the judges may draw post positions from the stand for succeeding dashes or heats.

7.1.2.4 Declarations by mail, telegraph, facsimile machine or telephone actually received and evidence of which is deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others. Such drawings shall be final. Mail, telegraph, facsimile machine and telephone declarations must state the name and address of the owner or lessee; the name, color, sex, sire and dam of the horse; the driver's name and racing colors; the date and place of last start; a current summary, including the number of starts, firsts, seconds, thirds, earnings and best winning time for the current year; and the event or events in which the horse is to be entered.

7.1.2.5 Failure to declare as required shall be considered a withdrawal from the event.

7.1.2.6 After declaration to start has been made no horse shall be withdrawn except by permission of the judges. A fine, not to exceed \$500, or suspension may be imposed for withdrawing a horse without permission, the penalty to apply to both the horse and the party who violates the regulation.

7.1.2.7 Where the person making the declaration fails to honor it and there is no opportunity for a hearing by the judges, this penalty may be imposed by the commission representative.

7.1.2.8 Where a horse properly declared is

omitted from the race by error of the association, the race shall be redrawn; provided, however, that the error is discovered prior to the publication of the official program.

7.1.2.9 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier, except as provided for in handicap claiming races. Whenever a horse is drawn from any tier, horses on the outside move in to fill up the vacancy. When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

7.1.3 Qualifying Races

7.1.3.1 Qualifying races and starting gate schooling shall be held according to the demand as determined by the Presiding Judge or State Steward.

7.1.3.2 Qualifying standards shall be set at each track by the racing secretary and the judges. These may vary at different times of the year to accommodate weather and the class of horse available. Standards for trotters will be two seconds slower than pacers.

7.1.3.3 At all extended pari-mutuel meetings declarations for overnight events shall be governed by the following:

7.1.3.3.1 Before racing at a chosen gait, a horse must go a qualifying race at that gait under the supervision of a licensed judge and acquire at least one charted line by a licensed charter. In order to provide complete and accurate chart information on time and beaten lengths, a standard photo finish shall be in use.

7.1.3.3.2 Any horse that fails to race within thirty (30) days of its last start must go a qualifying race as set forth in a) above. However, at any race meeting this period can be extended up to sixty (60) days upon receiving approval of the Commission. The time period allowed shall be calculated from the date of the last race to and including the date of declaration. Horses entered and in to go in a race or races which are canceled due to no fault of their own, shall be considered to have raced in that race, and no start shall be counted for date preference purposes.

7.1.3.3.3 When a horse has raced at a charted meeting and then gone to meetings where the races are not charted the information from the uncharted lines may be summarized including each start and consolidated in favor of charted lines to include a charted line within the last thirty (30) days before the horse is permitted to race. The consolidated line shall carry date, place, time, driver, finish, track condition and distance.

7.1.3.3.4 The judges may permit a horse to qualify by means of a timed workout consistent with the time of the races in which he will compete in the event adequate competition is not available for a qualifying race.

7.1.3.3.5 When, for the purpose of qualifying

the driver, a horse is declared in to race in a qualifying race, its performance shall be applicable to the horse's eligibility to race and the chart line shall be notated to indicate driver qualifying.

7.1.3.3.6 If a horse takes a win race record in either a qualifying race or a matinee race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has been submitted to an approved urine, saliva or blood test. It will be the responsibility of the Presiding Judge to report the test on the Judges' Sheet.

7.1.3.4 Any horse regularly wearing hobbles shall not be permitted to be declared to race without them and any horse regularly racing without hobbles shall not be permitted to wear hobbles in a race without first having qualified with this equipment change. In addition to the foregoing, any horse regularly wearing hobbles and which is not on a qualifying list or Stewards' List, is allowed one start without hobbles in a qualifying race; and this single performance shall not affect its eligibility to race with hobbles in a subsequent event to which it is declared.

7.1.3.5 In their discretion the judges may require a horse to qualify for any reason; provided, however, that a horse making a break in each of two consecutive races may not be required to qualify if the breaks were solely equipment breaks and/or were caused solely by interference and/or track conditions.

7.1.3.6 A horse must qualify if:

7.1.3.6.1 ~~it is distanced for reasons other than interference, broken equipment or breaking stride; or~~

~~7.1.3.6.2 it does not finish for reasons other than interference or broken equipment.~~

7.1.3.7 A charted line containing only a break or breaks caused by interference or an equipment break shall be considered a satisfactory charted line.

7.1.3.8 The judges shall use the interference break mark only when they have reason to believe that the horse was interfered with by another horse or the equipment of another horse.

7.1.3.9 If qualifying races are postponed or canceled, an announcement shall be made to the participants as soon as the decision is made.

7.1.4 Coupled Entries

When the starters in a race include two or more horses owned by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry", and a wager on one horse in the entry shall be a wager on all horses in the "entry"; provided, however, that when a trainer enters two or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownership, such horses may, at the request of the association, made through the State Steward, and with the approval of the Commission, be permitted to race as separate entries. If the race is split in two or more

divisions, horses in an "entry" shall be seeded in separate divisions insofar as possible, but the divisions in which they compete and their post positions shall be drawn by lots. The above provisions shall also apply to elimination heats. The person making the declaration of a horse that qualifies as a coupled entry with another horse entered in the same event shall be responsible to designate the word "entry" on the declaration blank. The Presiding Judge shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only; provided, however, that where this is done entries may not be rejected.

7.1.5 Also Eligibles

Not more than two horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one or more horses are excused by the judges, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horses shall take the place of the horse that it replaces in the event that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list cannot be drawn except by permission of the judges, but the owner or trainer of such a horse shall be notified that the horse is to race and it shall be posted at the racing secretary's office. All horses on the also eligible list and not moved in to race by Scratch Time on the day of the race shall be released.

7.1.6 Preference Dates

Preference dates shall be given to horses in all overnight events at extended pari-mutuel tracks in accordance with the following:

7.1.6.1 The date of the horse's last previous start in a purse race during the current year is its preference date with the following exceptions:

7.1.6.1.1 The preference date on a horse that has drawn to race and has been scratched is the date of the race from which scratched.

7.1.6.1.2 When a horse is racing for the first time after February 1 in the current year, the date of the first declaration into a purse race shall be considered its preference date.

7.1.6.1.3 Wherever horses have equal preference in a race, the actual preference of said horses in relation to one another shall be determined by lot.

7.1.6.1.4 When an overnight race has been re-opened because it did not fill, all eligible horses declared

into the race prior to the re-opening shall receive preference over other horses subsequently declared, irrespective of the actual preference dates, excluding horses already in to go.

7.1.6.2 This rule relative to preference is not applicable at any meeting at which an agricultural fair is in progress. All horses granted stalls and eligible must be given an opportunity to compete at these meetings.

7.6 Racing Rules

7.6.1 Under Supervision of Starter

7.6.1.1 Horses shall be under supervision of the starter from the time they arrive on the track until the start of the race.

7.6.1.2 All horses shall parade from the paddock to the starting post, and no driver shall dismount without the permission of the starter. Attendants may not care for the horses during the parade except by permission of the starter.

7.6.1.3 After entering the track not more than ten (10) minutes shall be consumed in the parade of the horses to the post except in cases of unavoidable delay.

7.6.1.4 Horses awaiting post time may not be held on the backstretch in excess of five (5) minutes, except when delayed by an emergency.

7.6.2 Pre-Race Accidents

When, before a race starts:

7.6.2.1 A horse is a runaway or is otherwise involved in an accident, such horse shall be examined by the racing veterinarian and if the horse is not ordered scratched by the veterinarian, the judges may permit the horse to compete and have this decision announced.

7.6.2.2 A driver is unseated and appears to have been injured, the horse that was being driven by that driver may compete with a substitute driver.

7.6.2.3 If a horse is scratched in error and cannot be added back into the pari-mutuel system, the horse may race for purse only. The judges shall ensure that the race announcer informs the public that the horse will be racing without pari-mutuel wagering.

7.6.3 Fair Start

The starter shall give such orders and take such measures that do not conflict with the rules of racing, as are necessary to secure a fair start.

7.6.4 Starter's Duties

7.6.4.1 The starter shall be in the starting gate ten (10) minutes before the post time of the race.

7.6.4.2 The starter shall have control over the horses and authority to assess fines and/or suspend drivers for any violation of the rules from the formation of the parade until the word "go" is given.

7.6.4.3 The starter may assist in placing the horses when requested by the judges to do so.

7.6.4.4 The starter shall notify the judges and the drivers in writing of penalties imposed by him/her.

7.6.5 Starting

7.6.5.1 The starter shall have control of the formation of the parade until giving the word "go".

7.6.5.2 After ~~one or two preliminary~~ warming up scores, the starter shall notify the drivers to come to the starting gate. ~~During or before the parade the drivers must be informed as to the number of scores permitted.~~

7.6.5.3 The horses shall be brought to the starting gate as near one-quarter of a mile before the start as the track will permit.

7.6.5.4 Allowing sufficient time so that the speed of the gate can be increased gradually, the following minimum speeds will be maintained:

7.6.5.4.1 For the first one-eighth of a mile, not less than 11 miles per hour.

7.6.5.4.2 For the next one-sixteenth of a mile, not less than 18 miles per hour.

7.6.5.4.3 From that point to the starting point, the speed will be gradually increased to maximum speed.

7.6.5.4.4 On mile tracks horses will be brought to the starting gate at the head of the stretch and the relative speeds mentioned in a), b) and c) above will be maintained.

7.6.5.5 The starting point will be a point marked at a designated spot not less than 200 feet from the first turn. The starter shall give the word "go" at the starting point.

7.6.5.6 When a speed has been reached in the course of a start there shall be no decrease except in the case of a recall.

7.6.6 Recall Rules

7.6.6.1 In case of a recall, a light plainly visible to the drivers shall be flashed and a recall sounded, but the starting gate shall proceed out of the path of the horses. In the case of a recall, whenever possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use his/her discretion to close the wings of the gate.

7.6.6.2 There shall be no recall after the word "go" has been give unless there is a mechanical failure of the starting gate.

7.6.6.3 The starter shall attempt to dispatch all horses away in position and on gait but there shall be no recall for a breaking horse after the recall point is passed.

7.6.6.4 In the event a horse causes two recalls, it may be an automatic ruling of the judges that the offending horse be scratched.

7.6.6.5 The starter may sound a recall for the following reasons:

7.6.6.5.1 A horse scores ahead of the gate;

7.6.6.5.2 There is interference;

7.6.6.5.3 A horse has broken equipment;

7.6.6.5.4 A horse falls before the word

"go" is given; or

7.6.6.6.5 A mechanical failure of the starting gate.

7.6.6.6 There shall be a recall pole placed one-eighth of a mile before the starting point, before or at which point, at the discretion of the starter, there may be a recall for a breaking horse or horses not up to the gate. When the recall pole is passed, there shall be no recall for a breaking horse or a horse not up to the gate except as provided in 7.6.6.5.1 - 7.6.6.6.5 above. Horses not up to the gate in position due to the fault of the driver may result in the driver being penalized by the starter.

7.6.6.7 A fine and/or suspension may be applied to any driver for:

7.6.6.7.1 Delaying the start;

7.6.6.7.2 Failure to obey the starter's instructions;

7.6.6.7.3 Rushing ahead of the inside or outside wing of the gate;

7.6.6.7.4 Coming to the starting gate out of position;

7.6.6.7.5 Crossing over before reaching the starting point;

7.6.6.7.6 Interference with another driver during the start; or

7.6.6.7.7 Failure to come up into position.

7.6.7 Starting Gate

7.6.7.1 No persons shall be allowed to ride in the starting gate except the starter and the driver or operator and a patrol judge, unless permission has been granted by the State Steward.

7.6.7.2 Use of the mechanical loudspeaker for any purpose other than to give instructions to the drivers is prohibited. The volume shall be no higher than necessary to carry the voice of the starter to the drivers.

7.6.7.3 The arms of all starting gates shall be provided with a screen or shield in front of the position for each horse, and such arms shall be perpendicular to the rail.

7.6.7.4 The official starter must ensure that the starting gate is in good working order prior to the beginning of each race program.

7.6.7.5 The official starter and starting gate driver shall operate the starting gate in a manner consistent with the safe conduct of the race, the safety of the race participants and the safety of the patrons.

7.6.8 Two-Tiered Races

7.6.8.1 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the positions of horses that have drawn or entered positions in the second tier.

7.6.8.2 Whenever a horse is drawn from any tier, horses on the outside move in to fill the vacancy. Where a horse has drawn a post position in the second tier, the driver of such horse may elect to score out behind any horse in the

front tier so long as it does not interfere with another trailing horse or deprive another trailing horse of a drawn position.

7.6.8.3 When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

7.6.9 Starting Without a Gate

7.6.9.1 When horses are started without a gate the starter shall have control of the horses from the formation of the parade until giving the word "go". The starter shall be located at the wire or other point of start of the race at which point as nearly as possible the word "go" shall be given. No driver shall cause unnecessary delay after the horses are called. After two preliminary warming-up scores, the starter shall notify the drivers to form in parade.

7.6.9.2 The driver of any horse refusing or failing to follow the instructions of the starter as to the parade or scoring ahead of the pole horse may be set down for the heat in which the offense occurs, or for such other period as the starter shall determine, and may be fined. Whenever a driver is taken down, the substitute shall be permitted to score the horse once. A horse delaying the race may be started regardless of its position or gait and there shall not be a recall because of a bad acting horse. If the word "go" is not given, all the horses in the race shall immediately turn on signal, and jog back to their parade positions for a fresh start. There shall be no recall after the starting word is given.

7.6.10 Horse Deemed a Starter

Horses shall be deemed to have started when the word "go" is given by the starter and all horses must go the course except in the case of an accident in which it is the opinion of the judges that it is impossible to go the course.

7.6.11 Unmanageable/Bad Acting Horses

7.6.11.1 If, in the opinion(s) of the judges and/or the starter, a horse is unmanageable or liable to cause accidents or injury to any other horse or to any driver, it may be sent to the barn. When this action is taken, the starter will notify the judges who will in turn notify the public and order any refunds as may be required in Rule 10 of these rules.

7.6.11.2 The starter may place a bad acting horse on the outside at his/her discretion. Such action may be taken only where there is time for the starter to notify the judges who will in turn notify the public prior to any pari-mutuel wagering on the race. If pari-mutuel wagering has already begun on the race, the horse must be scratched as stipulated in subdivision 1 above.

7.6.12 Post Positions, Heat Racing

7.6.12.1 The horse winning a heat shall take the inside position in the succeeding heat, unless otherwise specified in the published conditions of the race, and all others shall take their positions in the order they were placed in the prior heat.

7.6.12.2 When two or more horses dead heat, their positions shall be determined by lot.

7.6.13 Conduct of the Race

7.6.13.1 A driver shall not commit any of the following acts which are considered violations of driving rules:

7.6.13.1.1 Change course or position, or swerve in or out, or bear in or out during any part of the race in such a manner as to compel a horse to shorten its stride or cause another driver to change course, take his or her horse back, or pull his/her horse out of its stride.

7.6.13.1.2 Impede the progress of another horse or cause it to break from its gait.

7.6.13.1.3 Cross over too sharply in front of another horse or in front of the field.

7.6.13.1.4 Crowd another horse by 'putting a wheel under it.'

7.6.13.1.5 Allow another horse to pass needlessly on the inside, or commit any other act that helps another horse to improve its position.

7.6.13.1.6 Carry another horse out.

7.6.13.1.7 Take up or slow up in front of other horses so as to cause confusion or interference among the trailing horses.

7.6.13.1.8 Maintain an outside position without making the necessary effort to improve his/her overall position.

7.6.13.1.9 Strike or hook wheels with another sulky.

7.6.13.1.10 Lay off a normal pace and leave a hole when it is well within the horse's capacity to keep the hole closed.

7.6.13.1.11 Drive in a careless or reckless manner.

7.6.13.1.12 Fail to set, maintain or properly contest a pace comparable to the class in which he/she is racing considering the horse's ability, track conditions, weather and circumstances confronted in the race.

7.6.13.1.13 Riding 'half-in' or 'half-out'.

7.6.13.1.14 Kicking a horse.

7.6.13.2 A complaint by a driver of any foul, violation of the rules or other misconduct during a race shall be made immediately after the race to which it relates, unless the driver is prevented from doing so by an accident or injury or other reasonable excuse. A driver desiring to enter a claim of foul, or other complaint of violation of the rules, shall make this known to the starter before dismounting and shall proceed immediately to the paddock telephone to communicate immediately with the judges. The judges shall not cause the official sign to be posted until the matter has been dealt with.

7.6.13.3 If a violation is committed by a person driving a horse coupled as an entry the judges may set both horses back if, in their opinion, the violation may have affected the finish of the race, otherwise penalties may be applied individually.

7.6.13.4 In the case of interference, collision, or violation of any rules, the offending horse may be placed back one or more positions in that heat or dash, and in the event of such collisions, interference or violation preventing any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver may be fined or suspended. If a horse is set back, it must be placed behind the horse with which it interfered. If an offending horse has interfered with a horse involved in a dead heat and the offending horse is set back, it must be placed behind the horses in the dead heat.

7.6.13.5 If the judges believe that a horse is, or has been driven with design to prevent it winning a race or races, they shall consider it a violation by the driver.

7.6.13.6 If the judges believe that a horse has been driven in an inconsistent manner, they shall consider it a violation.

7.6.13.7 If the judges believe that a horse has been driven in an unsatisfactory manner due to lack of effort or a horse has been driven in an unsatisfactory manner for any reason, they shall consider it a violation punishable by a fine and/or suspension.

7.6.13.8 If a horse is suspected to have choked or bled during a race, the driver and/or trainer of that horse is required to report this to the judges immediately after the race.

7.6.13.9 If, in the opinion of the judges, a driver is for any reason unfit or incompetent to drive, or is reckless in his/her conduct and endangers the safety of horses or other drivers in a race, he/she shall be removed and another driver substituted at any time and the offending driver may be fined, suspended or expelled.

7.6.13.10 If for any cause other than being interfered with, or broken equipment, a horse fails to finish after starting a race, that horse shall be ruled out of any subsequent heat of the same event. If it is alleged that a horse failed to finish a race because of broken equipment, this fact must be reported to the paddock judge who shall make an examination to verify the allegation and report the findings to the judges.

7.6.13.11 A driver must be mounted in the sulky at all times during the race or the horse shall be placed as a non-finisher.

7.6.13.12 Shouting or other improper conduct in a race is forbidden.

7.6.13.13 Drivers shall keep both feet in the stirrups during the post parade and from the time the horses are brought to the starting gate until the race has been completed. Drivers shall be permitted to remove a foot from the stirrups during the course of the race solely for the purpose of pulling ear plugs and once same have been pulled the foot must be placed back into the stirrup. Drivers who violate this rule may be subject to a fine and/or suspension.

7.6.13.14 Drivers will be allowed to use whips not

to exceed three feet, nine inches in length plus a snapper not to exceed six inches in length.

Drivers shall keep a line in each hand from the start of the race until the quarter pole. From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8th pole, these restrictions do not apply.

1 DE Reg. 923 (01/01/98), 2 DE Reg. 684 (10/01/98)

7.6.13.15 The use of any goading device, or chain, or spur, or mechanical or electrical device other than a whip as allowed in the rules, upon any horse, shall constitute a violation.

7.6.13.16 The possession of any mechanical or electrical goading device on the grounds of an association shall constitute a violation.

7.6.13.17 The judges shall have the authority to disallow the use of any equipment or harness that they feel is unsafe or not in the best interests of racing.

7.6.13.18 Brutal or excessive or indiscriminate use of a whip, or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation. At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory visual inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or conduct such visual inspections at their discretion.

1 DE Reg. 923 (01/01/98)

7.6.13.19 Whipping a horse by using the whip below the level of the shafts or the seat of the sulky or between the legs of the horse shall be a violation.

7.6.13.20 When a horse breaks from its gait, it shall be considered a violation on the part of the driver for:

7.6.13.20.1 Failure to take the horse to the outside of other horses where clearance exists.

7.6.13.20.2 Failure to properly attempt to pull the horse to its gait.

7.6.13.20.3 Failure to lose ground while on a break.

If no violation has been committed, the horse shall not be set back unless a contending horse on his/her gait is lapped on the hind quarter of the breaking horse at the finish. The judges may set any horse back one or more places if in their judgment, any of the above violations have been committed, and the driver may be penalized.

7.6.13.21 If, in the opinion of the judges, a driver allows a horse to break for the purpose of losing a race, he or she shall be in violation of the rules.

7.6.13.22 It shall be the duty of one of the judges to call out every break made and have them duly recorded in judges official race reports.

7.6.13.23 The horse whose nose reaches the wire first is the winner. If there is a dead heat for first, both

horses shall be considered winners. In races having more than one heat or dash, where two horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary, the winner of the faster dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same time, both horses shall be considered winners and the entitlement of the trophy will be decided by lot.

7.6.13.24 The wire or finish line is a real line established with the aid of a surveyor's transit, or an imaginary line running from the center of the judges' stand to a point immediately across and at right angles to the track.

7.6.13.25 If, during the preliminary scores or during a race a driver is unseated in such a manner that he or she falls to the ground, the State Steward or judges may direct the driver to report to the infirmary or to the emergency department of the nearest hospital for examination and receive clearance to continue with driving assignments on that day of racing.

7.6.13.26 If a horse is to warm up it must go its last warm-up on the same racing strip as it will compete on unless excused by the judges.

7.6.14 Hubrail

If at a racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse's sulky leaves the course by going inside the hub rail or other demarcation which constitutes the inside limits of the course, the offending horse shall be placed one or more positions where, in the opinion of the judges, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. Drivers may be fined or suspended for permitting a horse or any portion of a sulky inside the pylons or other demarcation which constitutes the inside limits of the course. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.

7.6.15 Extended Homestretch

7.6.15.1 With approval of the Commission, a track may extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the racetrack.

7.6.15.2 In the event the home stretch is expanded pursuant to 7.6.15.1 above, the following shall apply:

7.6.15.2.1 no horse shall pass on the extended inside lane except when entering the stretch for the final time;

7.6.15.2.2 the lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane; and

7.6.15.2.3 horses using the open stretch must first have complete clearance of the pylons. Any horse or sulky running over the pylons and/or going to the inside of

the pylons to clear shall be disqualified.

8.0 Veterinary Practices, Equine Health Medication

8.1 General Provisions

The purpose of this Rule is to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

8.2 Veterinary Practices

8.2.1 Veterinarians Under Authority of ~~State~~ Commission ~~Veterinarian~~

Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are subject to these Rules, which shall be enforced under the authority of the State Commission veterinarian and the State Steward. Without limiting the authority of the State Steward to enforce these Rules, the State Commission veterinarian may recommend to the State Steward or the Commission the discipline which may be imposed upon a veterinarian who violates the rules.

8.2.2 Treatment Restrictions

8.2.2.1 Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the Commission.

8.2.2.2 This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

8.2.2.2.1 a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

8.2.2.2.2 a non-injectable substance on the direction or by prescription of a licensed veterinarian; or

8.2.2.2.3 a non-injectable non-prescription medication or substance.

8.2.2.3 No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the State Steward, judges and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and

restrictions set by the State Steward, judges and/or the Commission.

8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and may impose penalties and disciplinary measures consistent with the recommendations contained in subsection B of this section. ~~The State Steward may also consult with the official veterinarian to determine the nature and seriousness of the laboratory finding or the medication violation; provided, however, that in the event the State Steward determines that mitigating circumstances require imposition of a lesser penalty, he may impose the lesser penalty. In the event the State Steward wishes to impose a greater penalty or a penalty in excess of the authority granted him, then, and in such event, he may impose the maximum penalty authorized and refer the matter to the Commission with specific recommendations for further action. At the discretion of the State Steward, a horse alleged to have tested positive for a prohibited substance may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may, with the consent of the State Steward of the meeting, be released to the care of another licensed trainer, and may race.~~

8.3.1 Uniform Classification Guidelines

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the State Commission veterinarian and the racing secretary.

8.3.1.1 Class 1

Opiates, opium derivatives, synthetic opiates, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

8.3.1.2 Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse.

Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class:

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

8.3.1.2.4 Drugs with prominent CNS depressant action;

8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;

8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

8.3.1.3 Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class:

8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

8.3.1.3.2A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

8.3.1.3.4 Primary vasodilating/hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

8.3.1.4 Class 4

This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;

8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects

8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants

8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics

8.3.1.4.2.3 Drugs used to void the urinary bladder

8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

8.3.1.4.3 Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

8.3.1.4.4 Mineralocorticoid drugs;

8.3.1.4.5 Skeletal muscle relaxants;

8.3.1.4.6 Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

8.3.1.4.6.1 Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;

8.3.1.4.6.2 Corticosteroids (glucocorticoids); and

8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.

8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;

8.3.1.4.8 Less potent diuretics;

8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:

8.3.1.4.9.1 Cardiac glycosides;

8.3.1.4.9.2 Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and

8.3.1.4.9.3 Miscellaneous

cardiotonic drugs.

8.3.1.4.10 Topical Anesthetics--agents not available in injectable formulations;

8.3.1.4.11 Antidiarrheal agents; and

8.3.1.4.12 Miscellaneous drugs including:

8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;

8.3.1.4.12.2 Stomachics; and

8.3.1.4.12.3 Mucolytic agents.

8.3.1.5 Class 5

Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

8.3.2 Penalty Recommendations

In the absence of aggravating or mitigating circumstances, the following penalties and disciplinary

measures may be imposed for violations of these medication and prohibited substances rules:

8.3.2.1 Class 1--One to five years suspension and at least \$5,000 fine and loss of purse.

8.3.2.2 Class 2-- Six months to one year suspension and \$1,500 to \$2,500 fine and loss of purse.

8.3.2.3 Class 3--Sixty days to six months suspension and up to \$1,500 fine and loss of purse.

8.3.2.4 Class 4--~~Fifteen to 60 days suspension and up to \$1,000 fine and loss of purse.~~

8.3.2.4.1 If the substance is detected in a blood sample, or if the substance is detected in any sample in which more than one prohibited substance is detected, or if the substance is detected in a urine sample at a level which, in the opinion of the official chemist, caused interference with testing procedures: Fifteen to 50 days suspension and up to \$1,000 fine and loss of purse.

8.3.2.4.2 If the substance is detected in a urine sample but not in a blood sample:

8.3.2.4.2.1 And if such detection is the first violation of this chapter within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.2.4.2.2 And if such detection is the second violation of this chapter within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.2.4.2.3 And if such detection is the third violation of this chapter within a 12-month period: Up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8.3.2.5 Class 5--~~Zero to 15 days suspension with a possible loss of purse and/or fine.~~

Where aggravating or mitigating circumstances exist, greater or lesser penalties and/or disciplinary measures may be imposed than those set forth above. In particular, in the presence of aggravating circumstances -- including but not limited to (1) repeated violations of these medication and prohibited substances rules by the same trainer or with respect to the same horse; (2) prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse; or (3) violations which endanger the life or health of the horse -- greater penalties, up to and including lifetime suspension, may be imposed. In determining the appropriate penalty with respect to a medication rule violation, the State Steward or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and shall consult with the State Veterinarian, the Commission veterinarian and/or the Commission chemist to determine the seriousness of the laboratory finding or the medication violation. Where aggravating or mitigating circumstances exist, greater or lesser penalties and/or disciplinary measures may be imposed than those set forth above. Specifically, if the State Steward or other designee of the Commission determine that mitigating circumstances warrant imposition

of a lesser penalty than the recommendations suggest, he may impose a lesser penalty. If the State Steward or other designee of the Commission determines that aggravating circumstances require imposition of a greater penalty, however, he may only impose up to the maximum recommended penalty, and must refer the case to the Commission for its review, with a recommendation for specific action. Without limitation, the presence of the following aggravating circumstances may warrant imposition of greater penalties than those recommended, up to and including a lifetime suspension:

(1) Repeated violations of these medication and prohibited substances rules by the same trainer or with respect to the same horse;

(2) Prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse; or

(3) Violations which endanger the life or health of the horse.

With respect to Class 1, 2 and 3 drugs detected in a urine sample but not in a blood sample, and in addition to the foregoing factors, in determining the length of a suspension and/or the amount of a fine, or both, the State Steward or judges may take into consideration, without limitation, whether the drug has any equine therapeutic use, the time and method of administration, if determined, whether more than one foreign substance was detected in the sample, and any other appropriate aggravating or mitigating factors.

Whenever a trainer is suspended more than once within a two-year period for a violation of this chapter regarding medication rules, any suspension imposed on the trainer for any such subsequent violation also shall apply to the horse involved in such violation. The State Steward or judges may impose a shorter suspension on the horse than on the trainer.

At the discretion of the State Steward or other designee of the Commission, a horse as to which an initial finding of a prohibited substance has been made by the Commission chemist may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may, with the consent of the State Steward or other designee of the Commission be released to the care of another trainer, and may race.

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

8.3.3.1.1 the drug or medication is listed by the Association of Racing Commissioners International's Drug Testing and Quality Assurance Program; and

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the ~~published~~ limit established in these Rules or

otherwise approved and published by the Commission.

8.3.3.2 Except as otherwise provided by this chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter during the ~~48~~ 24-hour period before post time for the race in which the horse is entered. Such administration shall result in the horse being scratched from the race and may result in disciplinary actions being taken.

8.3.3.3 A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

8.3.3.3.1 drugs or medications for which no acceptable levels have been established in these Rules or otherwise approved and published by the Commission;

8.3.3.3.2 therapeutic medications in excess of ~~established acceptable levels~~ acceptable limits established in these rules or otherwise approved and published by the Commission;

8.3.3.3.3 substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules, provided that a licensee has the right, pursuant to ~~procedures to be established by the Commission~~ such procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels; and provided, further, that an excess total carbon dioxide level shall be penalized in accordance with the penalty recommendation applicable to Class 2 substance.

1 DE Reg. 923 (01/01/98)

8.3.3.3.4 substances foreign to a horse at levels that cause interference with testing procedures.

8.3.3.4 The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian, in which case the horse shall be scratched. The practice of administration of any substance via a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation or license.

8.3.4 Medical Labeling

8.3.4.1 No person on association grounds

where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labelled in accordance with this subsection.

8.3.4.2 Any drug or medication which is used or kept on association grounds and which, by federal or Delaware law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable federal and state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

8.3.5 Furosemide (Lasix)

8.3.5.1 General

Furosemide (Lasix) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Except under the instructions of the State veterinarian for the purpose of removing a horse from the Steward's List or to facilitate the collection of a post-race urine sample, furosemide (Lasix) shall be permitted only after the State veterinarian has placed the horse on the Bleeder List.

8.3.5.2 Method of Administration

Lasix shall be administered intravenously by a licensed practicing veterinarian, unless the State Commission veterinarian determines that a horse cannot receive an intravenous administration of Lasix and gives permission for an intramuscular administration; provided, however, that once Lasix is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

8.3.5.3 Dosage

Lasix shall be administered to horses on the Bleeder List only by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 If less than 500 milligrams is

administered, and subsequent laboratory findings are inconsistent with such dosage or with the time of administration, then the trainer shall be subject to a fine or other disciplinary action;

8.3.5.3.2 Not more than 750 milligrams may be administered if (1) the State veterinarian grants permission for a dosage greater than 500 milligrams, and (2) after the administration of such greater dosage, the horse remains in a detention area under the supervision of a Commission representative until it races; and

8.3.5.3.3 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the State veterinarian.

8.3.5.4 Timing of Administration

Horses must be presented at the Lasix stall in the paddock, and the Lasix administered, not more than three hours and 30 minutes (3-1/2 hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined. If a horse is late at the Lasix stall a second consecutive time, the horse will be scratched and removed from the Bleeder List, and placed on the Steward's List for ten (10) days.

8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed practicing veterinarian at the rate approved by the Commission. No credit shall be given.

8.3.5.6 Restrictions

No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (Lasix) in oral form.

8.3.5.7 Post-Race Quantification

8.3.5.7.1 As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of Lasix per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, unless the dosage of Lasix:

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.2.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.3.2 or exceeded 500 milligrams as provided in 8.3.5.3.2, then a penalty shall be imposed as follows:

8.3.5.7.2.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250

fine and loss of purse.

8.3.5.7.2.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.5.7.2.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.5.7.2.4 If in the opinion of the official chemist any such overage caused interference with testing procedures, then for each such overage a penalty of up to a \$1,000 fine and a suspension of from 15 to 50 days may be imposed.

8.3.5.8 Reports

8.3.5.8.1 The licensed practicing veterinarian who administers Lasix to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the State Steward at least one (1) hour before the horse is scheduled to race.

8.3.5.8.3 The State Steward or judges shall order a horse scratched if the written certification is not received in a timely manner.

8.3.6.5.9 Bleeder List

8.3.6.5.9.1 The State Commission veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

8.3.6.5.9.1.1 visual examination wherein blood is noted in one or both nostrils either:

8.3.6.5.9.1.1.1 during a race;

8.3.6.5.9.1.1.2 immediately post-race or post-exercise on track; or

8.3.6.5.9.1.1.3 within one hour post-race or post-exercise in paddock and/or stable area, confirmed by endoscopic examination; or

8.3.6.5.9.1.2 endoscopic examination, which may be requested by the owner or trainer who feels his or her horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the State Commission veterinarian or Lasix veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

8.3.6.5.9.1.3 presentation to the State Commission veterinarian, at least 48 hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the

identification of bleeders are satisfactory to the State veterinarian.

8.3.6.5.9.2 The confirmation of a bleeder horse must be certified in writing by the State Commission veterinarian or the Lasix veterinarian and entered on the Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

8.3.6.5.9.3 Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List, and Lasix must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.6.5.9.4 A horse which bleeds in a twelve month period based on the criteria set forth in 8.3.6.5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.6.5.9.4.1 1st time - 10 days;

8.3.6.5.9.4.2 2nd time - 30 days, provided that the horse must be added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.6.5.9.4.3 3rd time - 30 days, and the horse shall be added to the Steward's List, to be removed at the discretion of the State Commission veterinarian following a satisfactory qualifying race after the mandatory 30-day rest period; and

8.3.6.5.9.4.4 4th time - barred for life.

8.3.6.5.9.5 An owner or trainer must notify the State Commission veterinarian immediately of evidence that a horse is bleeding following exercise or racing.

8.3.6.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies.

8.3.6.5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Lasix symbol in the program shall appropriately reflect that the horse did not receive Lasix its last time out. Such an election by the owner or trainer shall not preclude the State Commission veterinarian, State Steward or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be

questioned.

8.3.6.5.9.8 Any horse on the Bleeder List which races without Lasix in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.6.4 above.

8.3.6.5.9.9 The State Steward or Presiding Judge, in consultation with the State Commission veterinarian, will rule on any questions relating to the Bleeder List.

8.3.7 5.10 Medication Program Entries

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the State Commission veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone _____ or oxyphenbutazone may be administered to horses three years of age and older in such dosage amount that the official test sample shall contain not more than 2.0 micrograms per milliliter of blood plasma.

8.3.6.1.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.0 but not more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then a warning shall be issued to the trainer.

8.3.6.1.3 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then a penalty shall be imposed as follows:

8.3.6.1.3.1 For an overage between 2.6 and less than 5.0 micrograms per milliliter:

8.3.6.1.3.1.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.6.1.3.1.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.6.1.3.1.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.6.1.3.2 For an overage of 5.0 micrograms or more per milliliter: Up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its body at the time of the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and meclufenamic acid, then such presence of phenylbutazone or oxyphenbutazone, shall constitute a violation of this rule and shall be subject to a penalty of up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8.4 Testing

8.4.1 Reporting to the Test Barn

8.4.1.1 ~~The official winning horse and any other horse ordered by the Commission and/or the State Steward or judges shall be taken to the Test Barn to have a blood, urine and/or other specimen sample taken at the direction of the State Commission veterinarian.~~ Horses shall be selected for post-racing testing according to the following protocol:

8.4.1.1.1 At least one horse in each race, selected by the judges from among the horses finishing in the first four positions in each race, shall be tested.

8.4.1.1.2 Any claimed horse not otherwise selected for testing shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these rules. If such a request is made by a claimant, then the claimed horse shall not be permitted to be entered to race until the Commission chemist issues a report on his forensic analysis of the samples taken from the horse.

8.4.1.1.3 Horses selected for testing shall be taken to the Test Barn or Test Stall to have a blood, urine and/or other specimen sample taken at the direction of the State veterinarian.

8.4.1.2 Random or extra testing, including pre-race testing, may be required by the State Steward or judges, or by the Commission, at any time on any horse on association grounds.

8.4.1.3 Unless otherwise directed by the State Steward, judges or the State Commission veterinarian, a horse that is selected for testing must be taken directly to the Test Barn.

8.4.2 Sample Collection

8.4.2.1 Sample collection shall be done in accordance with the RCI Drug Testing and Quality Assurance Program External Chain of Custody Guidelines, or other guidelines and instructions provided by the State Commission veterinarian.

8.4.2.2 The State Commission veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be approved by the Commission.

8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to

be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission veterinarian. Only the owner, trainer, groom, or hot walker of horses to be tested shall be admitted to the detention area without permission of the Commission veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission veterinarian.

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

8.4.3.5.2 The Commission veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for

delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The "secondary" sample shall remain in the custody of the Commission veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

8.4.3.5.6 When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission veterinarian.

8.4.3.5.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

8.4.3.5.9 Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the "primary" and one for the "secondary" sample.

8.4.3.5.10 In the event of an initial finding of a prohibited ~~drug~~ drug substance or in violation of these Rules & Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample; provided, however, that the procedure for testing the 'secondary' sample shall not apply to, and there shall be no right to such testing of a 'secondary' sample with respect to, a finding of a prohibited level of total carbon dioxide in a submitted blood sample. provided, however, that with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the 'secondary' sample unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstances the 'secondary' sample shall be transported to a referee laboratory designated by the Commission for testing.

8.4.3.5.10.1 If testing of the

“secondary” sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

8.4.3.5.10.2 Testing of the “secondary” samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the “secondary” sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.12 The Commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

1 DE Reg. 505 (11/01/97)

8.5 Trainer Responsibility

The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

8.5.1 The trainer is responsible for the condition of horses entered in an official workout or race and is

responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his or her inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive; provided further that, except as otherwise provided herein, the trainer of record (programmed trainer) shall be any individual who receives any compensation for training the horse.

8.5.2 A trainer shall prevent the administration of any drug or medication or other ~~prohibited~~ foreign substance that may cause a violation of these rules.

8.5.3 A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

8.5.4 The trainer is responsible for:

8.5.4.1 maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

8.5.4.2 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5 Additionally, with respect to horses in his/her care or custody, the trainer is responsible for:

8.5.5.1 the proper identity, custody, care, health, condition and safety of horses;

8.5.5.2 ensuring that at the time of arrival at locations under the jurisdiction of the Commission a valid health certificate and a valid negative Equine Infectious Anemia (EIA) test certificate accompany each horse and which, where applicable, shall be filed with the racing secretary;

8.5.5.3 having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary;

8.5.5.4 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5.5 immediately reporting the alteration of the sex of a horse to the clerk of the course, the United States Trotting Association and the racing secretary;

8.5.5.6 promptly reporting to the racing secretary and the ~~State~~ Commission veterinarian when a

posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration;

8.5.5.7 promptly notifying the State Commission veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

8.5.5.8 promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the Commission to the State Stewards and judges, the State Commission veterinarian, and the United States Trotting Association;

8.5.5.9 maintaining a knowledge of the medication record and status;

8.5.5.10 immediately reporting to the State Steward, judges and the State Commission veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

8.5.5.11 ensuring the fitness to perform creditably at the distance entered;

8.5.5.12 ensuring that every horse he/she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this chapter;

8.5.5.13 ensuring proper bandages, equipment and shoes;

8.5.5.14 presence in the paddock at least one hour before post time or at a time otherwise appointed before the race in which the horse is entered;

8.5.5.15 personally attending in the paddock and supervising the harnessing thereof, unless excused by the Paddock Judge; ~~and~~

8.5.5.16 attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and

8.5.5.17 immediately reporting to the State Steward or other Commission designee, or to the State Veterinarian or Commission Veterinarian if the State Steward or other Commission designee is unavailable, the death of any horse drawn in to start in a race in this jurisdiction provided that the death occurred within 60 days of the date of the draw.

8.6 Physical Inspection of Horses

8.6.1 Veterinarian's List

8.6.1.1 The State Commission veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

8.6.1.2 A horse may be removed from the Veterinarian's List when, in the opinion of the State Commission veterinarian, the horse has satisfactorily recovered the capability of competing in a race.

8.6.2 Postmortem Examination

8.6.2.1 The Commission may conduct a postmortem examination of any horse that is injured in this

jurisdiction while in training or in competition and that subsequently expires or is destroyed. In proceeding with a postmortem examination the Commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

8.6.2.2 The Commission may conduct a postmortem examination of any horse that expires while housed on association grounds or at recognized training facilities within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

8.6.2.3 The Commission may take possession of the horse upon death for postmortem examination. The Commission may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for testing by the Commission-selected laboratory or its designee. Upon completion of the postmortem examination, the carcass may be returned to the owner or disposed of at the owner's option.

8.6.2.4 The presence of a prohibited substance in a horse, found by the official laboratory or its designee in a bodily fluid specimen collected during the postmortem examination of a horse, which breaks down during a race constitutes a violation of these rules.

8.6.2.5 The cost of Commission-ordered postmortem examinations, testing and disposal shall be borne by the Commission.

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10103 (3 **Del.C.** 10103)

The Delaware Thoroughbred Racing Commission proposes to amend the Commission's existing Regulations. The Commission proposes these amendments pursuant to 3 Del.C. §10103 and §10128

The Commission proposes three rule amendments which are summarized below:

1. Rule 19.03(a) would be amended to clarify that all appeals from decisions of the Stewards to the Commission must be filed with the Commission's Administrator of Racing. Rule 19.03(h) would be amended to add a new requirement that an appeal contain a sworn, notarized statement from the appellant stating that the appeal is taken in good faith and not for purposes of delay.

2. Rule 19.06(a) would be amended to provide that all requests for continuances must be filed with the Administrator of Racing with a copy sent to counsel for the Stewards. Rule 19.06(a) would be

further amended to provide that the Commission will not consider continuance requests from attorneys who have not filed an entry of appearance and provide that all out-of-state attorneys must first be admitted under the pro hac vice provision of Delaware Supreme Court Rule 72 before the Commission will consider a continuance request.

3. Rule 19.06(c) would be amended to provide the Commission will not consider any request for continuance absent good cause and failure to take reasonable action to retain an attorney will not consider good cause.

The Commission will receive written public comments from January 1, 1999 through January 30, 2000. Comments should be sent to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901. Copies of the proposed rules can be obtained from the Commission office at the above address.

19.03 Application for Review

An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or oral notice and shall:

- (a) Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee in the amount of \$250;
- (b) Contain the signature of the applicant and the address to which notices may be mailed to applicant;
- (c) Set forth the order or ruling requested to be reviewed and the date thereof;
- (d) Succinctly set forth the reasons for making such application;
- (e) Request a hearing;
- (f) Briefly set forth the relief sought;
- (g) Provide assurance to the Commission that all expenses occasioned by the appeal will be borne by the applicant; and
- (h) Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.

19.06 Continuances

(a) All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefor and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from

counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorney must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

(b) When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

(c) An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.

(d) If the Commission approves the application for continuance, it shall concurrently with such postponement, set a date for the continued hearing.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. 122(d))

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

CHILDREN WITH DISABILITIES

A. TYPE OF REGULATORY ACTION REQUESTED
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulations on Children With Disabilities from the Administrative Manual for Exceptional Children, July 1993, amended August 1993, and June 1996. The amendments serve two major purposes: isolate the DOE regulations from the Federal regulations and from the Del. C. and reflect the changes in the DOE regulations that are required by the 1997 amendments to the Individuals with Disabilities Education Act (IDEA). The Acting Secretary is also seeking the consent of the State

Board of Education to adopt all of the Federal IDEA Regulations as DOE regulations. The following are areas where the majority of the changes in the DOE regulations have occurred:

- Modified definitions for children having a developmental delay or learning disability.
- Incorporated a process for Expedited Hearings for disciplinary procedures.
- Assigned responsibility for eligibility determination to the IEP Team.
- Aligned settings for services with federal reporting requirements.
- Clarified definition as to days (business, school, and calendar).
- Introduced the instructional support team concept.

The technical assistance document will now be known as the *Administrative Manual for Special Education Services*.

C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations are designed to improve services for children with disabilities so that they can raise their performance on the state achievement standards.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations help insure that students with disabilities have an equal opportunity for an education.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address educational opportunity, not health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations will ensure that legal rights of students with disabilities are protected.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school levels?

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school levels to the same degree as the current regulations.

6. Will the regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations reflect the requirements of IDEA and do not place any more reporting or administrative requirements or mandates upon decision makers at the local board and school levels than the existing regulations.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity?

8. Will the regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations are consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

9. Is there a less burdensome method for addressing the purpose of the regulation?

Federal legislation, the Individuals with Disabilities Education Act, (IDEA) requires that the Department of Education put these regulations in place.

10. What is the cost to the state and to the local school boards of compliance with the regulations?

The amended regulations do not increase the present costs required to implement the IDEA.

AS AMENDED

900.5 Children with Disabilities

1.0 Adoption and Incorporation of Federal Regulations

1.1 The federal regulations adopted pursuant to the Individuals with Disabilities Act Amendments of 1997, effective May 11, 1999 and located at 34 CFR Parts 300 and 303, are adopted and incorporated as part of these Regulations.

1.2 These Regulations implement, complement and supplement the federal regulations and Chapter 31 of Title 14 of the Delaware Code (with the exception of Subchapter IV) and are designed and intended to insure compliance with applicable state and federal law. To the extent these Regulations conflict with the federal regulations, the federal regulations shall prevail.

1.3 These Regulations are arranged to correspond to the order of the federal regulations and shall be read in conjunction with the parallel provisions of the federal regulations, as illustrated by the *Administrative Manual for Special Education Services* (adopted February 2000), available at the Department of Education.

2.0 Identification of Children with Disabilities

2.1 Child Find: Each school district and any other public agency responsible for the education of children with disabilities shall identify, locate and evaluate or reevaluate all children with disabilities residing within the confines of

that district or other public agency, including children in private schools.

2.2 Health Screening: Health, hearing, vision, and orthopedic screening shall be conducted as specified in *The Regulations of the Department of Education*, 800.2, 800.3, 800.4, and 800.5.

2.3 Referral to Instructional Support Team: Referral to an instructional support team is a process whereby teachers enlist the help of the team to assist in the identification of potential instructional strategies or solutions for learning and behavior problems. The instructional support team process may or may not lead to referral for initial evaluation to determine eligibility and possible need for special education services. Documentation of the process should be comprehensive (including baseline and outcome data) and include strategies such as: curriculum based assessment, systematic observation, functional assessment, current health information and analyses of instructional variables.

2.3.1 Each district or other public agency shall adopt and implement procedures which provide for the referral of children to an instructional support team. All such referrals shall be specified in writing.

2.3.2 Referrals for an individual child which do not contain all required documentation shall be returned to the school based instructional support team with a request for the required information. Returns may be triggered if documentation does not indicate evidence as described in the instructional support team process. These provisions shall not be used by a school district to delay the provision of an individual student evaluation when all pre-referral data are complete and the referral agent maintains that the student is in need of an individual student evaluation.

2.3.3 A parent may initiate a referral at any time for an initial evaluation to determine whether or not there is a need for special education services.

3.0 Procedures for Evaluation and Determination of Eligibility

3.1 Initial Evaluation: Informed written parental consent shall be obtained before conducting an initial evaluation and the meeting to determine eligibility shall occur within 60 school days of the receipt of consent for the initial evaluation unless additional time is mutually agreed upon.

3.2 Evaluation Procedures

3.2.1 Qualified Evaluation Specialists

3.2.1.1 A qualified evaluation specialist is a person who has met State approval or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing student evaluation services.

3.2.2 Eligibility decisions may include (1) historical information and (2) evaluation data which are no more than two years old.

3.2.3 Each initial evaluation shall be completed in a manner which precludes undue delay in the evaluation of students.

3.2.4 The Evaluation Report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for students with a learning disability.

3.3 Procedures for Determining Eligibility and Placement

3.3.1 Children who have an articulation impairment as their only presenting disability may not need a complete battery of assessments. However, a qualified speech-language pathologist shall evaluate each child who has a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments.

3.3.2 Written Report: The Evaluation Report shall document the IEP team's discussion of the child's continued eligibility, including, where appropriate, the additional requirements for students with a learning disability.

3.3.3 Cognitive Ability: For cases in which continued eligibility for special education services is dependent upon level of cognitive ability or discrepancies between ability and achievement such as learning disability and mental disability, the IEP team shall ensure that the eligibility decision is based on reliable and valid individual assessment data. For children identified prior to age 7, a second individual evaluation shall occur after the child's 7th birthday, and be at least one year apart from the earlier evaluation. The results of these two evaluations shall lead to substantially similar conclusions about the child's level of cognitive ability or discrepancy between ability and achievement, if applicable.

3.3.4 Delaware Student Testing Program Participation: Determination as to the child with disabilities' participation in the Delaware Student Testing Program will be made by the IEP team in conformity with the guidelines as delineated in the Delaware Student Testing Program *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*.

4.0 Eligibility for Services

4.1 Age of Eligibility: Programs shall be provided for children with disabilities in age ranges as set out in accordance with Chapters 31 and 17 of Title 14 of the *Delaware Code* and other age ranges as provided for by State and/or federal legislation.

4.1.1 The age of eligibility for special education and related services for children identified as having a hearing impairment, visual impairment, deaf-blindness, or autism, shall be from birth through 20 years, inclusive.

4.1.2 The age of eligibility for children identified as having preschool speech delay shall be from the

third birthday up to, but not including, the fifth birthday.

4.1.3 The age of eligibility for children identified as having a developmental delay shall be from the third birthday up to, but not including, the fourth birthday.

4.1.4 The age of eligibility for children identified as having speech and/or language impairment shall be from the fifth birthday through twenty years, inclusive; provided, however, that children attaining the minimum age by December 31 of the school year shall also be eligible. These children receive a free appropriate public education as preschool speech delayed upon reaching their third birthday.

4.1.5 The age of eligibility for children identified as having a physical impairment, trainable mental disability, traumatic brain injury, or severe mental disability shall be from the third birthday through 20 years inclusive; provided, however, that students in these categories attaining the minimum age by December 31 of the school year shall also be eligible.

4.1.6 The age of eligibility for children identified as having emotional disturbance, educable mental disability, or learning disability shall be from the fourth birthday through 20 years inclusive; provided, however, that children in these categories attaining the minimum age by December 31 of the school year shall also be eligible. These children receive a free appropriate public education as developmentally delayed upon reaching their third birthday.

4.1.7 Children in special education who attain age 21 after September 30 may continue their placement until the end of the school year including appropriate summer services through August 31.

4.2 Definitions and General Eligibility/Exit Criteria

4.2.1 Eligibility Criteria - General: A child shall be considered eligible to receive special education and related services, and to be counted in the appropriate section of the unit funding system noted in 14 Delaware Code, Ch. 17, Section 1703, when such eligibility and the nature of the disabling condition are determined by an IEP team. Eligibility and the nature of the condition shall be based upon consideration of the results of individual child evaluation data obtained from reports and observations and the definitions and criteria delineated in these regulations. Eligibility for classification under any one or more categories shall include documentation of the educational impact of the disability. Documentation of eligibility shall include an evaluation report from a qualified evaluation specialist. Eligibility for classification under any one or more categories shall include, but shall not be limited to, an evaluation report from the evaluation specialist designated under the eligibility criteria for each disability.

4.2.2 Exit Criteria - General: A child ceases to be eligible for special education and related services when the IEP team determines that special education is no longer

needed for the child to benefit from his or her educational program or the child graduates with a high school diploma. In making the determination, the team shall consider:

4.2.2.1 Eligibility criteria;

4.2.2.2 Data-based and/or documented measures of educational progress; and

4.2.2.3 Other relevant information

4.3 Eligibility Criteria for Autism: An IEP team shall review evidence for the following behavioral manifestations:

4.3.1 The presence of an impairment of verbal and nonverbal communication skills including the absence of speech or the presence of unusual speech features, and a combination of the following:

4.3.1.1 Impairment in reciprocal social orientation/interaction;

4.3.1.2 Extreme resistance to change and/or control;

4.3.1.3 Preoccupation with objects and/or inappropriate use of objects; and/or

4.3.1.4 Unusual motor patterns, including, but not limited to, self-stimulation and self-injurious behavior.

4.3.2 Identification of autism shall be documented through an evaluation by either a licensed psychologist, a certified school psychologist, a qualified physician, or a qualified psychiatrist. Determination of the condition of autism and eligibility for special education shall be made by an IEP team and reviewed by the Monitoring Review Board.

4.3.3 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child, who exhibits a significant delay in one or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross motor and/or fine motor), social/emotional functioning, and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

4.4.1 In order for an IEP team to determine eligibility for special education services, under the Developmental Delay category, the following is required:

4.4.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross and/or fine), social/emotional functioning or adaptive behavior; or

4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

4.4.1.3 Clinical judgment of the IEP team that is based on the multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report.

4.4.2 Age of Eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the fourth birth date.

4.5 Eligibility Criteria for Deaf Blind: An IEP team shall consider the following in making a determination that a child has a deaf-blind condition:

4.5.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

4.5.2 An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.5.3 Classification as a child who is deaf-blind shall be made by the IEP team after consideration of the above eligibility criteria.

4.5.4 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.6 Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

4.6.1 The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, and:

4.6.1.1 Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer groups; or

4.6.1.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general

pervasive mood of unhappiness or depression and/or is unable to enter into age-appropriate relationships with peers, teachers and others; and

4.6.1.3 Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse.

4.6.2 The age of eligibility for children identified under this definition shall be from the fourth birthday through 20 years, inclusive.

4.7 Eligibility Criteria for Hearing Impairment

4.7.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal observation or procedure; and

4.7.2 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.7.3 The age of eligibility of children identified under this definition shall be from birth through 20 years, inclusive.

4.8 Eligibility Criteria for Learning Disability: In order for an IEP Team to determine eligibility for special education services under the learning disability category, the following is required:

4.8.1 Written documentation of the formative intervention process used with the student. The documentation must include a:

4.8.1.1 clear statement of the student's presenting problem(s).

4.8.1.2 summary of diagnostic data collected and the sources of that data.

4.8.1.3 summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

4.8.2 A comprehensive psychological assessment to evaluate the student's reasoning and cognitive processes in order to rule out mental retardation and emotional disturbance; and

4.8.3 An IQ/achievement discrepancy in reading or writing or math using the regression tables.

4.8.4 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.

4.9 Mental Disability: The degree of mental disability is defined as follows: Educable Mental Disability (EMD) - I.Q. 50-70, +5 points; Trainable Mental Disability (TMD) - I.Q. 35-50, +5 points; Severe Mental Disability (SMD) - I.Q. below 35.

4.9.1 Eligibility Criteria for Mental Disability: The IEP team shall consider both the level of intellectual functioning and effectiveness of adaptive behavior, as measured by a licensed or certified school psychologist, in determining that a child has a mental disability and the degree of mental disability.

4.9.2 The age of eligibility for children identified under the TMD, and SMD definition shall be from the third birthday through 20 years, inclusive. Children identified under the EMD definition shall be from the fourth birthday through 20 years inclusive. These children may be served at age 3 as having a developmental delay.

4.10 Eligibility Criteria for Physical Impairments: Eligibility criteria for physical impairments include examples of orthopedic disabilities, but are not limited to: traumatic brain injury, cerebral palsy, muscular dystrophy, spina bifida, juvenile rheumatoid arthritis, amputation, arthrogyposis, or contractures caused by fractures or burns. Examples of health impairments include, but are not limited to: cancer, burns, asthma, heart conditions, sickle cell anemia, hemophilia, epilepsy, HIV/AIDS or medical fragility.

4.10.1 A qualified physician shall document that a child has a physical impairment in order to be considered for special education and related services under the above definition.

4.10.2 The IEP team shall consider the child's need for special education and related services if the physical impairment substantially limits one or more major activities of daily living and the student has:

4.10.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

4.10.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture and/or body use necessary for performing school work; or

4.10.2.3 Similar disabilities which result in reduced efficiency in school work because of temporary or chronic lack of strength, vitality, or alertness.

4.10.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.10.3.1 Medical records documenting the physical impairment are required, and current medical prescriptions such as O.T./P.T., medication, catheterization, tube feeding shall be included if available;

4.10.3.2 Results from specialist team screening using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary. the team shall include, but not necessarily be limited to, an educator and physical or occupational therapist;

4.10.3.3 Prior program or school records

if available; and when determined necessary, a speech/language evaluation, adaptive behavior scale, vision or hearing screening, social history, and/or psychological evaluation.

4.10.4 Age of Eligibility: The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

4.11 Speech and/or Language Impairment Eligibility Criteria: In determining eligibility under the Speech and/or Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech-Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; and/or a voice disorder.

4.11.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech and/or language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.

4.12 Eligibility Criteria for Traumatic Brain Injury: A qualified physician must document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

4.12.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

4.12.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

4.13 Visual Impairment Eligibility Criteria

4.13.1 Legally Blind shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

4.13.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual-perceptual or visual-motor dysfunction resulting solely from a learning disability.

4.13.3 A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, partially sighted.

4.13.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining

eligibility for special education under the above definition.

4.13.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.14 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only)

4.14.1 A speech disability is defined as a communication disorder/delay involving articulation, voice quality, and/or speech fluency to such a degree that it interferes with a child's overall communicative performance.

4.14.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

4.14.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized/norm-based instrument. It is strongly recommended that the evaluation include clinical observations and/or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

4.14.2.1.1 articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test,

4.14.2.1.2 conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist,

4.14.2.1.3 oral motor involvement which may affect the development of normal articulation.

4.14.2.1.4 Speech Fluency, or

4.14.2.1.5 Voice Quality

4.14.3 Results of the evaluation may indicate a significant delay in receptive and/or expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

4.14.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

5.0 Individualized Education Program (IEP): An IEP shall be developed prior to delivery of services and within thirty (30) calendar days following the determination that a child is eligible for special education and related services.

5.1 Transition Between Grades or Levels: During the annual review, the IEP team shall consider the needs of the child with a disability who is scheduled for a move. Communication with the staff of the receiving program shall occur to ensure that a child's transition between grades or levels does not endanger his/her receipt of a free appropriate public education.

5.2 IEP of Transferring Students with Disabilities

5.2.1 A child with a disability who transfers from one school district or other public agency educational program to another must be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a decision mutually agreed upon by the parents and representative of the receiving school district or other public agency.

5.2.2 The request for, and the forwarding of, records shall be in accordance with Department procedures.

5.2.3 A child's IEP from the sending school district or other public agency may be acceptable for temporary provision of special education services. The agreement shall be documented by the signatures of a parent and the receiving principal on a temporary placement form or the cover page of the IEP.

5.2.4 A review of the IEP shall be instituted and completed within thirty (30) calendar days from the date of initial attendance of the child in the receiving agency, and sixty (60) calendar days for students transferring from out-of-state schools. The receiving school is responsible for ensuring that all requirements concerning evaluation, IEP development, placement, and procedural safeguards shall be applied in determining the provision of special education and related services for transferring children.

5.3 IEP Team: Participants at an IEP meeting shall be collectively identified as the IEP Team.

5.3.1 The agency representative must have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

5.3.2 The district shall notify parents of the IEP meeting no less than ten (10) business days prior to the meeting (unless mutually agreed otherwise) to ensure that they have the opportunity to attend, and no less than three (3) business days for removal due to disciplinary action.

5.4 Content of the Individualized Education Program: Each child who is determined to be eligible for special education and related services shall have a single IEP.

5.4.1 The IEP shall designate whether or not it is necessary to place the child who is transported from school by bus into the charge of a parent or other authorized responsible person.

5.4.2 By the middle of the eighth grade, the IEP shall include plans to determine the child's interests/preferences, and to make application to high school and vocational education programs. Full transition services planning will apply by the end of the ninth grade or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP Team.

5.5 Monitoring IEPs: As part of the on-going responsibility for the monitoring and evaluation of programs to determine compliance with state and federal requirements,

the school district and/or other public agency shall review the IEPs of children with disabilities to determine that their content is consistent with requirements of these regulations. Documentation of monitoring efforts shall be maintained by the school district and/or other public agencies.

5.6 Need for Extended Year Services: Full consideration must be given to the particular educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education (FAPE) during the regular school year.

5.6.1 Degree of Impairment: The team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature and/or severity of the child's disability.

5.6.2 Regression/recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the team should consider that these criteria focus on students who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. The team may utilize predictive data for children in their initial year of programming.

5.6.3 Breakthrough opportunities: The team should determine whether, without extended school year services, the attainment of a nearly acquired critical skill would be significantly jeopardized over the summer break.

5.6.4 Vocational: For children ages 16-20 whose IEPs contain vocational/employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.

5.6.5 Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.

5.6.6 Extended school year services are to be based on needs and goals/objectives found within the child's IEP of the school year, though activities may be different.

5.6.7 This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs provided by local school districts. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, per his/her IEP.

5.6.8 The decision of the setting for the delivery of extended school year services shall be an IEP team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled students for the sole purpose of satisfying the LRE requirements for students receiving extended school year services.

5.6.9 Transportation shall be provided to students except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a transportation option if the parent voluntarily transports the student.

5.6.10 Written notice shall be provided to parents advising them that extended school year services will be discussed at the IEP meeting. The IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.

5.6.11 In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year.

6.0 Least Restrictive Environment is operationalized in terms of the degree of interaction between children with and without disabilities. The decision about placement within the least restrictive environment is made following the writing of the IEP and is directly related to the child's needs and identified services documented in the IEP. Settings in which services can be provided include:

6.1 Regulation Education Class: Children with disabilities receive special education and related services outside the regular classroom for less than 21 percent of the school day. This may include children with disabilities placed in:

6.1.1 regular class with special education/related services provided within regular classes,

6.1.2 regular class with instruction within the regular class and with special education/related services provided outside regular classes, or

6.1.3 regular class with special education services provided in resource rooms.

6.2 Resource Class: Children with disabilities receiving special education and related services outside the regular classroom for at least 21 percent but no more than 60 percent of the school day. This may include children and youth placed in:

6.2.1 resource rooms with special education/related services provided within the resource room, or

6.2.2 resource rooms with part-time

instruction in a regular class.

6.3 Self-Contained Class: Children with disabilities receiving special education and related services outside the regular classroom for more than 60 percent of the school day. This does not include children who received education programs in public or private separate day or residential facilities. This may include children and youth placed in:

6.3.1 self-contained special classrooms with part-time instruction in a regular class.

6.3.2 self-contained special classrooms with full-time special education instruction on a regular school campus.

6.4 Public Separate Day School: Children with disabilities receive special education and related services for greater than 50 percent of the school day in public separate facilities. This may include children and youth placed in:

6.4.1 public day schools for children with disabilities, or

6.4.2 public day schools for children with disabilities for a portion of the school day (greater than 50 percent) and in regular school buildings for the remainder of the school day.

6.5 Private Separate Day School: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private separate facilities. This may include children and youth placed in private day schools for students with disabilities.

6.6 Public Residential Placement: Children with disabilities receiving special education and related services for greater than 50 percent of the school day in public residential facilities. This may include children and youth placed in

6.6.1 public residential schools for children with disabilities, or

6.6.2 public residential schools for children with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6.7 Private Residential Facilities: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private residential facilities. This may include children and youth placed in:

6.7.1 private residential schools for children with disabilities, or

6.7.2 private residential schools for students with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6.8 Homebound/Hospital Placement: Supportive Instruction (Homebound Instruction) is supportive instruction in an alternative program provided at home,

hospital or related site for children suffering from an illness or injury. For other disabled children it may be the level of service which assures a free, appropriate public education.

6.8.1 In extraordinary instances where the child with a disability is a danger to himself or to herself, or is so disruptive that his or her behavior substantially interferes with the learning of other students in the class, the IEP team may provide the child with supportive instruction and related services at home in lieu of the child's present educational placement.

6.8.2 Services provided under these conditions shall be considered a change in placement on an emergency basis and shall require IEP team documentation that such placement is both necessary and temporary and is consistent with requirements for the provision of a free, appropriate public education.

6.8.3 In instances of parental objection to such home instruction, due process provisions apply.

6.8.4 To be eligible for supportive instruction and related services, the following criteria shall be met:

6.8.4.1 The child shall be identified as disabled and in need of special education and/or related services and enrolled in the school district or other public educational program; and

6.8.4.2 If absence is due to medical condition, be documented by a physician's statement where absence will be for two weeks or longer; or

6.8.4.3 If absence is due to severe adjustment problem, be documented by an IEP team that includes a licensed or certified school psychologist or licensed psychiatrist, and that such placement is both necessary and temporary; or if for transitional in-school program, be documented by the IEP team that it is necessary for an orderly return to the educational program.

6.8.5 IEPs specifying supportive instruction services shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.

6.8.6 Supportive instruction, related services and necessary materials shall be made available as soon as possible, but in no case longer than 30 days following the IEP meeting. Such instruction and related services may continue upon return to school when it is determined by the IEP team that the child needs a transitional program to facilitate his or her return to the school program.

6.9 Least Restrictive Environment Placement Decisions: The school district shall ensure that when a child with a disability is placed, a chronologically age-appropriate placement is provided.

6.9.1 Placement decisions shall not be based on category of disability, configuration of the service/support delivery system, availability of educational or related services, availability of space, or curriculum content or methods of curriculum delivery.

6.9.2 A change in placement requiring an IEP team meeting occurs when the district proposes to initiate or change the placement of the child. This includes a change in:

6.9.2.1 The amount of time of regular, special education and/or related services; or

6.9.2.2 The settings as identified in 6.1 – 6.8 above.

6.9.3 A change of placement does not include a change of teachers when the same services are being provided, a change in the scheduled of service delivery, or routine movement within a feeder pattern, i.e., grade level changes.

7.0 Vocational Education: When appropriate to individual needs of the children, as determined by the IEP team, each school district or other public agency responsible for the education of a child with a disability shall provide vocational education programs for such children in the Least Restrictive Environment.

7.1 Children with disabilities will be provided with equal access to recruitment, enrollment and placement activities.

7.2 Children with disabilities will be provided with equal access to the full range of vocational programs available to all students including occupational specific courses of study, cooperative education, apprenticeship programs and to the extent practicable, comprehensive career guidance and counseling services.

7.3 In addition to the vocational program, each school district or other public agency shall ensure the following supplementary services are provided to children with disabilities:

7.3.1 Codification of curriculum, equipment and facilities as needed;

7.3.2 Supportive personnel;

7.3.3 Instructional aids and devices;

7.3.4 Guidance, counseling and career development staff who are associated with the provision of such special services;

7.3.5 Counseling services designed to facilitate the transition from school to post-school employment and career opportunities. Carl D. Perkins Vocational & Technical Education Act of 1998.

7.3.6 Regular vocational programs with supportive services as identified by the IEP team; and

7.3.7 Special education vocational programs.

7.4 Each school district or other public agency must provide assurances that they will assist in fulfilling the transitional service requirement as defined in Individuals with Disabilities Education Act (IDEA).

7.5 Each school district or other public agency shall ensure the provision of an appropriate vocational education, including access to Career Pathways, as determined by the IEP team through the availability of a

continuum of vocational education placements. The continuum of placements includes, but is not limited to:

7.5.1 Regular vocational programs with no supportive services;

7.5.2 Regular vocational programs with supportive services as identified by the IEP team;

7.5.3 Special education vocational programs;

7.5.4 Self-contained vocational programs; and

7.5.5 Community based job training programs.

8.0 Facilities, Equipment and Materials: All facilities which house programs for children with disabilities must meet the standards approved by the State Board of Education with regard to space, health, fire, safety, and barrier-free regulations.

8.1 All instructional or treatment programs for children with disabilities shall provide appropriate materials and equipment for implementation of individualized education programs.

9.0 Length of School Day: The minimum length of the instructional school day for a child with a disability in Kindergarten through grade twelve shall be the same as it is for non-disabled children in those grades. The minimum length of the school day for disabled pre-Kindergarten children shall approximate that of non-disabled pre-Kindergarten children, except in a program for the hearing impaired in which the parent is involved in the educational program. In such a program, the school and the parent together shall determine the schedule for the five (5) hours per week minimum instruction. Provision of fewer hours of instructional time than required by the above standards is authorized only in unusual circumstances where a child is medically unable to endure the required length of school day, and then only by IEP committee decision after disclosure of the above standards to the child's parents/guardian.

10.0 Compulsory Attendance: Compulsory attendance will be in accordance with 14 Del. C., Section 2703 and 2706, and shall apply to students with disabilities between the ages of 5 and 16. Attendance of children with disabilities under or over the compulsory school attendance age range, 14 Del. C., Section 2702, shall be determined by the IEP conference and subject to the eligibility criteria and appeal procedures provided in these rules and regulations by the Department of Education.

11.0 Transportation: Transportation of all children to and from school is provided under 14 Del. C., Ch. 29, and when special transportation needs are indicated in a child's IEP, transportation becomes a "related service."

11.1 Travel to and from school and between schools, including required specialized equipment, shall be at State expense when:

11.1.1 Such travel and/or specialized equipment requirements are specified on the child's IEP;

11.1.2 It is necessary for the implementation

of the child's IEP; and

11.1.3 Travel arrangements are made in consultation with the local transportation representative when unusual requirements are indicated.

11.2 Transportation provided to accommodate a related service shall be at local school district or other public agency expense. Transportation incidental to the disabled child's educational program shall not be at State expense, including, but not limited to work study arrangements; cooperative work arrangements; and extracurricular activities.

12.0 Discipline Procedures

12.1 Documentation, including the reasons for the action, must be made of any removal for more than 10 days. In addition to the removals identified in CFR Section 300.519, the following removals shall constitute a change in placement:

12.1.1 in-school removals for more than 10 days. If it deprives a child from (1) meeting the goals set out in the IEP, (2) progressing in the general curriculum - though in another setting, and (3) receiving those services and modifications described in the IEP; and

12.1.2 removals from transportation, if it results in the child's absence from school for more than 10 days.

12.2 Expedited Due Process Hearings

12.2.1 An expedited due process hearing shall be conducted by a single, impartial hearing officer appointed by the Department of Education from the attorney members of its Registry of Impartial Hearing Officers, and shall result in a decision within 45 days of the receipt of the request for a hearing.

12.2.2 Procedural rules for an expedited due process hearing shall differ from those for a regular due process hearing as follows:

12.2.2.1 Any party to a hearing has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least two (2) business days before the hearing.

12.2.2.2 At least two (2) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

12.2.2.2.1 The hearing officer may bar any party that fails to comply with this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

12.3 Corporal Punishment: Prior to any proposed administration of corporal punishment to a child with a disability, a determination by the child's IEP team shall be made as to whether or not the misconduct prompting the proposed corporal punishment is related to, or a manifestation of, the child's disability.

12.3.1 The misconduct is related to, or a manifestation of, the child's disability, any discipline shall be in accordance with the child's IEP.

12.3.2 The misconduct is not related to, or a manifestation of the child's disability, corporal punishment may be administered in accordance with the same State and other provisions as applied to non-disabled children in the school district or other public agency.

12.4 Written Notice: The school district or other public agency shall ensure that the parents/guardian of each child with disabilities receive written notice of the rules and regulations applicable to such children with respect to discipline, suspension, expulsion, exclusion as a treatment procedure, and corporal punishment at the beginning of each school year or upon entry into a special education program during the school year.

13.0 Educational Surrogate Parent: An "Educational Surrogate Parent", hereinafter referred to as "Surrogate Parent", is defined as an individual appointed to represent a child who receives, or may be in need of, special education in all educational decision-making pertaining to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the child.

13.1 A surrogate parent shall be appointed by the Department of Education to represent a child in all matters pertaining to the identification, evaluation, educational placement and the provision of a free appropriate public education when any one of the following situations exist:

13.1.1 a parent cannot be identified;

13.1.2 after reasonable efforts, the whereabouts of the parent cannot be discovered. Reasonable efforts include, but are not limited to, telephone calls, letters, certified letter with return receipt or visit to the parents' last know address;

13.1.3 parental rights have been terminated, and legal responsibility has not been granted by a court of law to an individual, not to include a state agency, and the child has not been adopted; or

13.1.4 the child's parent has consented voluntarily, in writing, to the appointment of an educational surrogate parent. Such consent is revocable by the parent at any time by written notice to the Department of Education.

13.2 A surrogate parent is not required for a child who receives, or may be in need of, special education when the child is living in the home of a relative who agrees to act in the place of the parent.

13.3 An otherwise eligible child between the ages of 18 and 21 shall continue to be entitled to the services of a surrogate parent. Such child, however, who has not been declared incompetent by a court of law retains the right to make his/her own educational decisions. This right to make decisions is extended to include:

13.3.1 the right of access to a surrogate

parent who shall act as an advisor to the student:

13.3.2 the right to refuse the appointment of a surrogate parent;

13.3.3 the right to participate in the selection of a surrogate parent; and

13.3.4 the right to terminate the services of a duly appointed surrogate parent.

13.3.5 To exercise any of the above rights, the child shall, upon notification of eligibility for services of a surrogate parent, declare his/her intentions in writing.

13.4 Nomination and Candidacy of Surrogate Parent: The Department of Education shall be notified in writing of the names of potential surrogate parents by anyone having knowledge of the person's willingness to serve.

13.5 Screening of Potential Surrogate Parents: Each potential surrogate parent shall be screened by the Department of Education, in consultation with school districts, to determine that he/she meets candidacy requirements.

13.6 To serve as a surrogate parent, each candidate shall:

13.6.1 be at least 18 years of age;

13.6.2 be a legal resident of the United

States;

13.6.3 be competent to represent the child;

13.6.4 not be an employee of a district or other public or private agency responsible for, or involved in, the education or care of the child (a person is not an employee of a district or agency solely because he/she is paid by the district or agency to serve as a surrogate parent). Foster parents are not considered employees for purposes of this requirement.

13.6.5 have no interest that conflicts with the interest of the child he/she may represent (such determination is made on a case-by-case basis). In general, a person would have a conflict of interest if she/he were in a position that might restrict or bias his/her ability to advocate for all of the services required to ensure a free appropriate public education for the child.

13.6.6 receive instruction about State and federal laws and regulations, due process procedures, disability conditions and the availability of programs and services for students with disabilities, as provided by the Department of Education; and

13.6.7 be able to converse in the primary communication mode used by the child, whenever possible.

13.7 Training for Surrogate Parents: Initial training for surrogate parents shall be provided by the Department of Education. Such training sessions shall be conducted at least annually.

13.7.1 The Department of Education shall issue a Certificate of Training to qualified persons who complete the required surrogate parent training.

13.7.2 The Department of Education shall notify districts and the Department of Services for Children, Youth and Their Families of persons who are certified as surrogate parents.

13.7.3 Follow-up training shall be provided by the Department of Education.

13.8 Appointment of Surrogate Parents: Each district shall be responsible for having procedures to locate and refer eligible children. Any person or entity, however, may identify a child believed to require a surrogate parent. Referral shall be made on the designated form to the Department of Education with a copy sent to the supervisor of special education in the district in which the child will receive or is receiving special education.

13.8.1 The Department of Education shall determine the child's eligibility for a surrogate parent.

13.8.2 The Department of Education staff person responsible for surrogate parents or his/her designee shall recommend to the Department of Education a certified surrogate parent to represent the student after consultation, as appropriate, with the local school district regarding the match of the surrogate parent to a particular child.

13.8.3 The Department of Education shall notify, in writing, the district and/or referring agency/person of the appointment.

13.8.4 A person may be appointed to serve as a surrogate parent for more than one child to the extent that such appointment is consistent with effective representation of the children. In no event shall one person be appointed as a surrogate parent for more than four children.

13.9 Responsibilities of Surrogate Parent: Each person assigned as a surrogate parent shall represent the child in all education decision-making processes concerning that child by:

13.9.1 becoming thoroughly acquainted with the child's educational history and other information contained in school records and reports relating to the child's educational needs;

13.9.2 granting or denying permission for initial evaluation or placement, and safeguarding the confidentiality of all records and information pertaining to the child to comply with State and federal regulations, including the use of discretion when sharing information with appropriate people for the purpose of furthering the interests of the child;

13.9.3 participating in the development of an IEP for the child;

13.9.4 reviewing and evaluating special education programs pertaining to the child and other such programs as may be available;

13.9.5 initiating mediation, complaint, hearing, or appeal procedures when necessary regarding the identification, evaluation, or educational placement of the child, and seeking qualified legal assistance when such

assistance is in the best interest of the child; and

13.9.6 taking part in training provided to become familiar with the State and federal laws and regulations, due process procedures regarding the education of children with disabilities, information about disabilities, and the availability of programs and services for such children.

13.10 The term of service of the surrogate parent shall be the length of time which the surrogate parent is willing to serve; or the length of time the child requires a surrogate parent; or so long as the qualifications to serve and the performance of duties as a surrogate parent are met.

13.11 Termination of Services of a Surrogate Parent: If the surrogate parent wishes to terminate his/her service in that capacity, he/she shall notify the Department of Education, in writing, at least thirty days prior to termination of such services.

13.11.1 The Department of Education shall determine whether each surrogate parent's appointment shall continue or be terminated. Termination shall be justified based only on material failure of the surrogate parent to discharge his/her duties or maintain confidentiality. The surrogate parent shall be given notice of a decision to terminate and shall have an opportunity to respond.

13.12 Compensation for Services as a Surrogate Parent: Surrogate parents shall be reimbursed by the Department of Education for all reasonable and necessary expenses incurred in performance of duties. Reasonable and necessary expenses include, but are not limited to:

13.12.1 mileage for attendance at meetings concerning the child being represented; and

13.12.2 long-distance telephone calls to the school in which the child is being served; and

13.12.3 photocopying of the child's records.

13.13 Liability of the Surrogate Parent: A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the child in protecting the special education rights of the child.

14.0 Procedural Safeguards

14.1 The district may require advance notice when parents or guardians wish to visit a proposed educational program.

14.2 Written notice must be given to parents of children with disabilities no less than ten (10) business days unless waived by agreement of both parties. In cases involving a change of placement for disciplinary removal, written notice must be provided no less than three (3) business days.

14.3 Documentation of attempts to notify the parents/guardian, by the district or any other public agency, shall be maintained.

14.4 Mediation of other disputes between the school and the parents/guardian as to the child's education program shall be offered at the discretion of the Department

of Education.

14.4.1 The process shall use an impartial, trained individual to assist the parties in working out acceptable solutions in an informed, non-adversarial context.

14.4.2 Parents may be accompanied and advised by individuals of their choice.

14.4.3 The district shall ensure the attendance of a representative with authority to make decisions and commit resources to agreed upon services.

14.4.4 The agreement is considered an educational record which may be released at parent's discretion.

15.0 Due Process Procedures

15.1 Initiation of Hearing Procedures: A request for a Due Process Hearing shall be made in writing to the Secretary of Education.

15.2 Legal Services: The Secretary of Education's response to the request for a hearing shall include a statement regarding free or low cost legal services.

15.3 The attorney member shall act as chairperson for the Due Process Hearing Panel, shall preside at all hearings, and shall write the final decision of the Due Process Hearing Panel. Any decision must have the concurrence of two members of the due Process Hearing Panel. In those cases where the chairperson holds a minority opinion, the educator member shall write the decision. Any member holding a minority opinion may write a separate report, which shall be attached to the decision.

15.4 Registry of Impartial Hearing Officers: The Department of Education shall keep a list of persons who may serve as hearing officers.

15.5 The hearing shall be scheduled by the chairperson of the Due Process Hearing Panel.

15.6 Any party to a hearing has the right to prohibit the introduction at the hearing of testimony of any witness whose identity has not been disclosed to the parties at least 5 business days before the hearing.

15.7 The parents/guardian shall have the right to receive a written decision which includes the following parts: statement of issues; summary of the proceedings; summary of evidence; findings of facts; conclusions of law; and summary of the issues on which the parties have prevailed.

15.8 The impartial Due Process Hearing Panel shall reach a final decision, and the chairperson shall record the vote of each panelist. The chairperson shall forward a copy of its final decision to the parties, and to the Department of Education.

15.9 The Department of Education shall forward the decision, with all personally identifiable information deleted, to the chairperson of the Governor's Advisory Council for Exceptional Citizens, and make those findings and decisions available to the public by placing legal notice annually in newspapers of sufficient circulation in each of

the three Delaware counties, that this information may be obtained through the Department of Education.

15.10 The chairperson of the Panel shall establish a timeline for the hearing process. In granting specific extensions, the chairperson shall ensure that the petitioner's right to redress is in no way diminished or unnecessarily delayed.

15.11 Non-Exclusivity of Remedies: The remedies identified in this section should not be viewed as exclusive. In certain contexts, other remedies created by law or local district practice may be available.

15.12 Non-Compliance: When the finding indicates non-compliance, the following procedures shall be followed:

15.12.1 The agency shall be presented with the findings and a time frame for corrective action specified by the Department of Education.

15.12.1.1 If the agency agrees with the findings and completes a specified corrective action within a time frame specified by the Department of Education, follow-up activities by the Department of Education will be conducted to verify full compliance.

15.12.1.2 A report of the findings will be prepared and sent to the Chief Administrative Officer of the agency and to the State Secretary of Education and the complainant.

15.13 Compliance: When the findings reveal full compliance, no further action shall be taken.

15.14 Any complainant under this section shall file the complaint in writing with the Department of Education, P. O. Box 1402, Dover, DE 19903, and shall include in the complaint the following:

15.14.1 the name of the agency against which the complaint is filed;

15.14.2 a statement that the agency has violated a requirement of the Individuals with Disabilities Education Act (IDEA) and/or the provisions of this Manual;

15.14.3 the facts on which the statement is based;

15.14.4 the time frame in which the incident(s) occurred;

15.14.5 a description of the attempts made to resolve the issue(s) prior to filing this action; and

15.14.6 name, address, phone number(s) of individual(s) filing the complaint and the legal representative, if any, or of individuals representing a public agency or private organization filing a complaint.

16.0 Confidentiality of Student Records

16.1 Parental Refusal to Release Records: In the event that a parent refuses to provide consent before personally identifiable information is disclosed to anyone other than officials of the district or State Department of Education, the parent shall be advised in writing that the district has either:

16.1.1 Recognized that refusal and will not forward the records; or the district will exercise its option to request an impartial due process hearing in order to effect the release of records. In the event that the district elects to seek a due process hearing, the district shall send the parent a copy of the *Special Education: Parents' Guide to Rights and Services* and a copy of parents' due process rights as delineated in this Manual.

17.0 High School Graduation

17.1 Continuing their Education: Students with disabilities who are unable to meet the requirements for a diploma shall be given the option to complete those requirements by continuing their education, at district expense, until their 21st birthday.

17.2 Graduation Process: Regardless of the document received at graduation by the student, whether a diploma or a certificate of performance, the student shall not be discriminated against during the graduation ceremonies. Specifically, a student with disabilities shall be allowed to participate in graduation exercises without reference to his/her disability, educational placement or the type of document conferred.

18.0 Reserved - Interagency/Special Programs

19.0 Reserved - Private Schools

20.0 Reserved - Unique Alternatives

21.0 General Supervision of Education for Students with Disabilities: The State Educational Agency (SEA) shall ensure that each educational program for students with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for students with disabilities in the State educational agency; and meets education standards of the State educational agency.

21.1 Documentation of SEA activity in meeting its responsibilities shall be maintained in a manner consistent with effective management procedures. Such documentation shall include, but not be limited to, issues pertaining to:

21.1.1 General Supervision, Cooperative Agreements, Complaint/Due Process Procedures, Compliance Monitoring, Project Coordination, Program Evaluation, Comprehensive System of Personnel Development, Dissemination; and Finance/Administration.

21.2 The SEA will ensure, through its Comprehensive Compliance Monitoring System, that each public agency develops and implements an IEP for each of its children with disabilities.

21.3 The Department of Education shall distribute these regulations, sample documents and letters of notification to all agencies (public and non-public) providing services to children with disabilities.

22.0 Advisory Council for Exceptional Citizens. The Governor shall appoint an advisory council to act in an

advisory capacity to the Department of Education, the State Board of Education and other state agencies on the needs of exceptional citizens. The General Assembly shall provide for the maintenance of the council. The council shall also serve in the capacity of the advisory panel as required by PL 94-142 (20 U.S.C. Section 1400 et seq.). (14 Del. C. 195, Section 3108; 51 Del. Laws, C. 287, Section 3; 61 Del. Laws, 190, Section 7; 71 Del. Laws, c. 180, Section 147.)

22.1 An annual report prepared by the Governor's Advisory Council for Exceptional Citizens shall be made available to the public in a manner consistent with other public reporting requirements.

22.1.1 The annual report shall be reviewed by the Department of Education and the Department's response shall be sent to the Governor's Advisory Council.

22.2 All Advisory Panel meetings and agenda items shall be publicly announced prior to the meeting, and meetings must be open to the public.

22.3 The State shall reimburse the Panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use Part B funds for this purpose.

23.0 Reserved - Funding

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

EDUCATIONAL PROGRAMS FOR STUDENTS WITH LIMITED ENGLISH PROFICIENCY

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulations Educational Programs for Students with Limited English Proficiency, Pages A-16 – A-18 in the Handbook for K-12 Education. The amended regulations are substantially changed and provide specific directions to local school districts as to the services that they must provide to students with limited English proficiency. The regulations define a student with limited English proficiency, provide an identification procedure, define a program for these students and set forth a reclassification procedure. The regulations also provide directions for monitoring student progress, program evaluation, reports for DOE and communication with language minority parents or guardians. Finally the regulations state that language minority students are to be a part of the Delaware State Testing Program (DSTP).

C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations are designed to assist limited English proficient students in improving their English skills and improving their achievement in all content areas.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations are designed to provide limited English proficient students with an equal opportunity to an education.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address educational opportunity, not health and safety issues.

4. Will the amended regulations help to ensure that limited English proficient students' legal rights are respected?

The amended regulations will insure that legal rights of students with limited English proficiency are protected.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations set the parameters around required services for limited English proficient students and still preserve the necessary authority and flexibility at the local board and school level.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations do not require additional reporting but may require additional administrative decisions at the local board and school levels pertaining to instruction for students with Limited English Proficiency..

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity?

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social

studies?

9. Is there a less burdensome method for addressing the purpose of the regulations?

The Office of Civil Rights requires that the Department of Education make such regulations.

10. What is the cost to the state and to the local school boards of compliance with the regulations?

There is an additional cost to local school boards for compliance with the regulations and funds are made available through the Academic Excellence Units and Extra Time for Students grants.

FROM THE HANDBOOK FOR K-12 EDUCATION

~~I. F. 3. LIMITED ENGLISH PROFICIENCY PROGRAMS (BILINGUAL EDUCATION)~~

~~a. The State Board of Education believes in the following program goals for students of limited English proficiency (LEP):~~

~~(1) the ensurance of equal educational opportunity to every eligible student of limited English proficiency;~~

~~(2) the enabling of limited English proficient students to continue to develop academically while achieving competence in the English language in order to facilitate their successful integration into regular classrooms and to allow them to meet grade promotion and graduation standards.~~

~~b. Eligibility~~

~~Eligibility for instructional programs designed for limited English proficient students should be based on the following criteria:~~

~~(1) A student who by reason of foreign birth or ancestry speaks a language other than English, or who has been identified by a valid English language assessment instrument as a pupil of limited English proficiency, is eligible to receive a program of bilingual education or English as a Second Language.~~

~~(2) The parents or legal guardians of limited English proficient children identified for enrollment in such programs should be informed of the reasons for their child's selection, the native language used in the program, and the alternative educational programs in the local district.~~

~~(3) Parental involvement in their children's instructional program should be encouraged, including the option of deciding whether or not to enroll their children in such programs.~~

~~e. Instructional Programs~~

~~(1) Instructional programs for pupils of limited English proficiency should not exceed three years, which period may be extended by the State Superintendent with respect to individual pupils, upon application by the appropriate school authorities.~~

~~(2) Where appropriate and practicable, transitional bilingual education programs may be provided to meet the~~

~~needs of qualified pupils in order to facilitate their future integration into the regular school curriculum. Where feasible, the bilingual education program may be provided on a cooperative, multi-school, multi-district or regional basis.~~

~~(3) Limited English Proficiency students bring to their schools and communities languages and cultural heritages that enrich the curriculum and school setting. Therefore, it is important to provide all children with opportunities for gaining an understanding of their own culture as well as the cultures of others.~~

~~(4) Bilingual programs should be designed to:~~

~~(a) provide content instruction for children of limited English proficiency using the child's native language and English;~~

~~(b) provide native language instruction; and~~

~~(c) provide English as a Second Language (ESL) instruction.~~

~~(5) The State Board of Education recognizes ESL-only programs as currently the best solution in answering the needs of school districts with small numbers of children from nations with uncommon languages or with small numbers of children speaking the same non-English language. ESL instruction should include the four language skills areas: listening/comprehension, speaking, reading, and writing and assist in the learning of content areas through structured monolingual instruction in English.~~

~~(6) Instruction in content area subjects (mathematics, science, and social studies) should be equivalent in scope to the curriculum required by the Department of Public Instruction and the local school district. Pupils taught in their native language are expected to progress in the content areas taught at the same rate as their English-speaking peers are expected to progress when taught in English.~~

~~(State Board Approved February 1987)~~

AS AMENDED

900.6 Educational Programs for Students with Limited English Proficiency

1.0 General. Each district shall identify upon enrollment every student with limited English proficiency, and each district shall make available to every identified student a program of specially designed instruction until such time as the student becomes fully proficient in English.

2.0 Student with Limited English Proficiency Defined. For the purpose of this section, a student with limited English proficiency is one who, by reason of foreign birth or ancestry, speaks a language other than English, and either comprehends, speaks, reads or writes little or no English, or who has been identified as a pupil of limited English proficiency by a valid English language proficiency assessment approved by the Department of Education for use

statewide.

3.0 Identification of Eligible Students. Each school district shall implement a system for the timely and reliable identification of students with limited English proficiency. This system shall include a home language survey and an assessment of English language proficiency.

3.1 A home language survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent or guardian the student's first acquired language and the language(s) spoken in the student's home.

3.2 Any student for whom a language other than English is reported on the home language survey as the student's first acquired language or as a language used in the student's home shall be administered an English language proficiency assessment. Such assessment shall be conducted in conformance with the following standards:

3.2.1 the assessment shall be based on a standardized instrument, validated for this purpose and approved by the Department of Education for use statewide;

3.2.2 the assessment shall measure English proficiency in reading, writing, speaking and oral comprehension;

3.2.3 the assessment shall be conducted by qualified personnel trained in the administration of the assessment instrument;

3.2.4 the assessment shall be conducted as soon as practicable, but not later than 25 school days after enrollment.

3.3 Any student who achieves a score on the English language proficiency assessment that is lower than the eligibility cut-off score in reading, writing, or oral English established by the Department of Education shall be regarded as a student with limited English proficiency and shall be entitled to a specially designed program of instruction for students with limited English proficiency.

3.4 To the extent practicable, by the conclusion of 1999 - 2000 school year, each district shall conduct a home language survey of every enrolled student as in 3.1 and, as applicable pursuant to 3.2, an English language proficiency assessment in accordance with 3.2.1 through 3.2.3. In any event, by September 30, 2000, each district shall ensure that such a home language survey and, as applicable, such an English language proficiency assessment have been conducted of all currently enrolled students who were in attendance at the conclusion of the 1999 - 2000 school year.

4.0 Specially Designed Program. Each enrolled student who is eligible for services pursuant to 3.3 above, shall be provided with a specially designed program of instruction for students with limited English proficiency.

4.1 A specially designed program of instruction for students with limited English proficiency shall include: formal instruction in English language development; and instruction in academic subjects which is designed to

provide students with limited English proficiency with access to the District's curriculum in a manner comparable to that provided to other students.

4.2 In selecting program(s), each district may choose from a variety of programs designed that are recognized as sound by experts in the education of limited English proficient students. Such program designs include bilingual programs as well as programs that are delivered exclusively in English.

4.2.1 Bilingual programs shall be designed to include:

4.2.1.1 standards-based instruction for students with limited English proficiency, using the student's native language and English;

4.2.1.2 instruction in reading and writing in the student's native language; and

4.2.1.3 English as a second language instruction.

4.2.2 Programs delivered exclusively in English shall be designed to include:

4.2.2.1 standards-based instruction for students with limited English proficiency, using English in a manner that takes into account the student's level of English proficiency;

4.2.2.2 instruction which builds on the language skills and academic subject knowledge the student has acquired in his or her native language; and

4.2.2.3 English as a second language instruction.

4.2.3 Programs shall be designed and implemented consistent with the goals of prompt acquisition of full English proficiency and progress in academic subject areas that is at a rate comparable to that of students who are not students with limited English proficiency.

4.2.4 Programs shall include instruction in academic subjects (mathematics, science, social studies) which is equivalent in scope to the instruction that is provided to students who are not limited in English proficiency.

4.2.5 Instruction shall be delivered by certified teachers who are trained in the delivery of instruction to students with limited English proficiency.

4.2.6 Where a bilingual program is offered, the parent or guardian of an eligible student may opt for the eligible student to be served in a specially designed program carried out exclusively in English.

5.0 Reclassification Procedures. At least once each school year, each eligible student shall be considered for reclassification as a fully English proficient student who no longer needs a specially designed program for students with limited English proficiency.

5.1 Reclassification shall include an assessment of English proficiency in accordance with the standards in 3.2.1 - 3.2.4 above.

5.2 Any student who achieves a score on the English language proficiency assessment which is lower than the eligibility cut-off score in reading, writing, or oral English established by the Department of Education shall be regarded as a student with limited English proficiency and shall continue to be eligible for a specially designed program of instruction for students with limited English proficiency.

5.3 Any student who achieves a score on the English language proficiency assessment at or above the eligibility cut-off score in reading, writing, and oral English established by the Department of Education may be reclassified as fully English proficient and considered ineligible for a specially designed program of instruction for students with limited English proficiency.

5.4 Before removing any student from a specially designed program for students with limited English proficiency, the district shall assess the student's level of performance in academic subject areas (mathematics, science and social studies), using standardized tests prescribed for this purpose by the Department of Education. Any reclassified student whose assessed performance in an academic subject area is below [define the level of underachievement which is qualifying for compensatory academic services] shall be provided with supplemental instructional services in the relevant academic subject area(s).

6.0 Monitoring Performance of Ineligible and Reclassified Students. For at least one school year following the determination of ineligibility or reclassification, a district shall monitor the academic performance of each student who has been: assessed pursuant to 3.2 above and found ineligible for a program; or reclassified as fully English proficient pursuant to 5.3 above. Students who experience academic performance problems during this period shall, based on further assessment, be considered for reentry into a specially designed program of instruction for students with limited English proficiency.

7.0 Program Evaluation. Each district shall prepare an annual evaluation of its program(s) for students with limited English proficiency. At a minimum, this program evaluation shall:

7.1 consider the validity of the assessment processes carried out pursuant to 3.2 and 3.3, and 5.1, 5.2, 5.3, and 5.4 above, in terms of predicting student success in the regular instructional program;

7.2 consider the effectiveness of each specially designed program of instruction for students with limited English proficiency in achieving the goals and standards in 4.2. above; and

7.3 describe any modifications that have been proposed or implemented, based on the evaluation data.

8.0 Student Information Reports. Each district shall provide the Department of Education annually with the language background and current English proficiency level,

type of specially designed program in which the student receives services, and related information. Such reporting shall take place in a manner prescribed by the Department of Education. A district shall provide such other information as the Department of Education may request, in order to assure adherence to this regulation.

9.0 Communications with Language Minority Parents/Guardians. Each district shall ensure that communications with parents/guardians, including notices of eligibility for a specially designed program for students with limited English proficiency, notices about the student's educational performance and progress in such programs, and school information that is made available to other parents/guardians, is provided to each language minority parent/guardian in a language the parent/guardian can understand.

10.0 Accountability. Students with limited English proficiency and students reclassified as fully English proficient shall be included in the Delaware Student Testing Program (DSTP). Alternative assessment measures may be used, as provided in Department of Education guidelines, including the *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*, as the same may, from time to time, be amended hereafter.

10.1 Differential analysis of the results of the DSTP and any alternative assessments measures shall be conducted on the performance of students with limited English proficiency and students reclassified as fully English proficient. Such data shall be made available with other accountability data for each district and the state as a whole.

10.2 The Department of Education and each district shall ensure that consequences and benefits under Delaware's system of statewide accountability are dispensed in a manner that is equitable to students with limited English proficiency and students reclassified as fully English proficient, based on assessments which accurately measure the student's performance in the area being assessed and are reflective of the curriculum which was delivered to the student.

REPEAL OF REGULATIONS

Pre-referral of Enrolled Students for Special Education and/or Related Services Policies and Programs for Exceptional Children

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal the following two regulations: Pre-referral of Enrolled Students for Special Education and/or Related Services, pages A-9 to A-11, and Policies, Programs and Services for Exceptional Children, pages A-14 and A-15, from the Handbook for K-12 Education. The repeals are necessary for the following reasons: Pre-referral of Enrolled Students for Special Education and/or Related Services is now covered in the 900.5 Regulations for Children with Disabilities, 3.0

Procedures for Evaluation and Determination of Eligibility, and Policies, Programs and Services for Exceptional Children is simply a technical assistance statement, not a regulation.

FROM THE HANDBOOK FOR K-12 EDUCATION

I.E.1. PRE-REFERRAL/REFERRAL OF ENROLLED STUDENTS FOR SPECIAL EDUCATION AND/OR RELATED SERVICES

a. Definition

Pre-referral is a process which attempts to address student learning problems prior to referral for special education and related services.

Referral is the process whereby a written request is made for formal evaluation of a student who is being considered for special education. Each referral shall be accompanied by documentation of attempts at pre-referral intervention.

b. Procedure

For students manifesting difficulty in classroom learning and who may be in need of special education and related services, the building principal shall insure that pre-referral interventions are implemented and documented. Implementation may be done by the referral agent, usually the student's current teacher, with the assistance of other educational personnel as needed. If the student's learning problem is not alleviated by these interventions, a referral shall be made requesting an individual student evaluation in accordance with the District's Operational Plan for Exceptional Students.

A parent may initiate a referral for special education at any time. In this event, at the discretion of the parent, pre-referral activities described in this Handbook may be bypassed.

c. Documentation

Pre-referral intervention documentation shall contain each of the following components:

(1) results of records review which may include school health records, vision and hearing screenings, and attendance records;

(2) results of conference(s) with the parent(s) or guardian, administrative and teaching personnel, and other ancillary personnel if needed;

(3) supportive anecdotal records from the referral agent which identify the student's learning or behavioral problem(s);

(4) results of at least two observations conducted by educational personnel, in at least two different settings; and

(5) documentation of the results of a minimum of two interventions, techniques or educational alternatives which have been employed over a pre-determined period of time. Interventions may include a change of staff, program

schedule, ancillary interventions, or other agency intervention.

d. Exemptions

Exempted from the pre-referral intervention procedures are:

(1) infants and pre-school-age children;

(2) children whose behaviors endanger themselves or others;

(3) children who are suspected of being autistic, trainable or severely mentally handicapped, hearing impaired, visually impaired, or deaf/blind;

(4) children who are orthopedically handicapped; and

(5) children with trauma-induced brain or spinal cord injury.

e. Other Considerations

Referrals for individual student evaluation which do not contain all required pre-referral documentation shall be returned to the referral agent with a request for the required information. A determination may be made by special services personnel that additional interventions are warranted. Upon agreement of the referral agent, the building principal and special services representative, such interventions may be implemented prior to referral for an individual student evaluation. These provisions, however, shall not be used by a school district to delay the provision of an individual student evaluation when all pre-referral data are complete and the referral agent maintains that the student is in need of such an evaluation.

FROM THE HANDBOOK FOR K-12 EDUCATION

I. POLICIES, PROGRAMS AND SERVICES FOR EXCEPTIONAL CHILDREN

a. Policies

The Delaware State Board of Education has adopted policies for the provision of a free, appropriate public education to exceptional children which incorporate both State and Federal requirements. Each principal should become familiar with these policies as established in the Administrative Manual: Programs for Exceptional Children, as revised in June, 1996. Copies of this Manual have been distributed to principals throughout the State and updates are forwarded annually.

b. Programs and Services

Each district has prepared and implemented an operational plan which describes the programs and services offered to exceptional students residing in the district. The plan includes a design of the current delivery system, policies and procedures, eligibility criteria, funding, district performance objectives, and program evaluation results. Written for use by both parents and administrators alike, copies of the plan are available through district special services personnel.

DEPARTMENT OF FINANCE**TAX APPEAL BOARD**

Statutory Authority: 30 Delaware Code,
Section 326(b) (30 Del.C. 326(b))

Please take Notice that the Delaware Tax Appeal Board proposes to adopt new rules and amend existing rules (including the Appendix to the Rules) of practice before the Board. The changes to the Board's rules are designed to streamline the processing of appeals before the Board and to provide for a small case procedure. The Board will receive and consider written comments from interested people on the proposed rules. Written comment must be submitted by February 29, 2000, and should be directed to the Board at its offices at the Carvel State Office Building, 8th Floor, 820 N. French Street, Wilmington, DE 19801.

Anyone wishing to obtain a copy of the proposed rules should contact Elizabeth Bremer, Administrative Assistant to the Board, by calling (302) 577-8665.

**STATE OF DELAWARE
RULES OF THE STATE TAX APPEAL BOARD****I. Business Hours – Time**

1a. The office of the secretary of the Board at Wilmington shall be open during the usual business hours of all days except Saturdays, Sundays, and legal holidays, for purpose of receiving petitioners, pleadings, motions and the like.

1b. Business hours are defined as those hours of each business day during which the offices of the ~~Division of Revenue~~ Secretary of Finance are open. They are 8 o'clock A.M. until 4:30 P.M. Eastern Time. Papers filed after 4:30 P.M. will be received on the next business day and will be so marked.

~~1c. Time, as provided in this and other rules and notes and notices of the Board, means the local time in effect in the City of Wilmington upon the day or days referred to by the papers aforementioned.~~

II. Admission to Practice Before the Tax Appeal Board

2. Thirty Del. C. section 334 governs the admission of individuals to practice before the Tax Appeal Board. A copy of section 334 is attached to these rules as Exhibit A.

~~2a. All attorneys now or hereafter admitted to practice by the Supreme Court of the State of Delaware are authorized to represent parties appearing before the Board.~~

~~2b. All accountants who have received a certificate as a Certified Public Accountant granted by the Delaware State Board of Accountancy or its successor and all other~~

~~accountants practicing within the State of Delaware who are entitled to practice as enrolled agents before the Internal Revenue Service are authorized to practice before the Board.~~

~~2c. Attorneys at law and Certified Public Accountants duly admitted to practice their respective professions by the appropriate authorities in other states, or the District of Columbia, or other accountants practicing outside the State of Delaware who are entitled to practice as enrolled agents before the Internal Revenue Service may, on application wherein good cause is shown, be admitted pro hac vice for the purpose of representing parties appearing before the Board.~~

~~2d. Any other person who establishes, to the satisfaction of the Board, that he or she is a citizen of the United States and of the State of Delaware, of good moral character and repute, and possessed of the requisite qualifications to represent others in the preparation and trial of matters before this Board, may be admitted to practice before the Board subject to such uniform requirements, interviews, or examinations which the Board, by supplemental rule, may adopt.~~

~~2e. The provisions of Rule II shall not be construed to prevent a party from appearing on his own behalf.~~

III. Form and Style of Papers

3a. All papers filed with the Board shall be typewritten and shall have a caption, and a signature and copies as specified below.

3b. Typewritten papers shall be typed on only one side of plain white paper. Pleadings, motions, orders and other similar papers shall be on paper 8 1/2" wide by 11" long.

3c. The proper caption omitting only prefixes and titles shall be placed in full upon the first paper filed. The full given name and sur-name of each individual petitioner shall be set forth in the caption. The name of the estate, trust or other person for whom he acts shall be given first by each petitioner who is a fiduciary, followed then by his own name and title.

3d. The signature of the petitioner or of his authorized representative shall be subscribed in writing to the original of all pleadings, motions and briefs, and shall be an individual and not a firm name except that the signature of the petitioner corporation shall be the name of the corporation by one of its active officers. The name and mailing address of the petitioner or counsel actually signing shall be typed or printed immediately beneath the written signature.

3e. Except when otherwise ordered by the Board, an original and six conformed copies of every pleading, motion, or other application to the Board shall be filed. Papers to be filed in more than one proceeding (as a motion to

consolidate, or in proceedings already consolidated) shall include one additional copy of each such additional proceeding. This rule shall not be construed to apply to exhibits, documents and papers offered a evidence.

3f. All copies shall be clear and legible but they may be on any weight paper.

IV. Filing of All Documents

~~4. All documents to be filed with the Board must be filed either by mail or by personal delivery in the office of the secretary of the Board, during business hours; provided that the Board, in its discretion, may permit documents pertaining to a proceeding then before it to be filed at the hearing. Documents filed by mail are sent at the risk of the sender and no paper "shall be considered filed until actually received by the Secretary of the Board" with "The date of the United States post mark stamped on the cover in which a document is mailed shall be deemed to be the date of delivery (filing) as long as the document is received by the Board secretary.~~

4a. For all documents to be filed with the Board, the documents must be filed either by depositing such documents in the United States mail, postage prepaid and properly addressed, or by personal delivery in the office of the secretary of the Board during business hours; provided the Board in its discretion, may permit documents pertaining to a proceeding then before it to be filed at the hearing. The date of the United States postmark stamped on the cover in which such document is mailed shall be deemed the date of delivery of such document. The Board's secretary shall conspicuously note on each document received by the Board (a) the postmark stamped on the cover of each document mailed to the Board; or (b) the date received if such document is personally delivered or the postmark on the cover of the document is illegible. In the absence of such notation, a document will be deemed to have been timely filed. Where a postmark is illegible, the secretary of the Board shall attach the cover in which the document was received to such document.

(b). A document mailed to the Board will be deemed to be timely filed if the postmark stamped on the cover in which such document is mailed is dated on or before the required date of filing. When the last day for filing any document falls on a Saturday, Sunday, or legal holiday in the State of Delaware, a document will be deemed timely filed if the document is personally delivered (or the postmark stamped on the cover in which such document is mailed is dated) on or before the next succeeding day that is not a Saturday, Sunday, or legal holiday in the State of Delaware. Documents filed by mail are sent at the risk of the sender and

will not be deemed to be received by the Board if not actually delivered; provided, however, that any document sent by United States registered or certified mail, postage prepaid and properly addressed, shall be prima facie evidence that such document was delivered to the Board on the date on which such document was sent by registered or certified mail.

V. Proper Parties

5. The proceeding shall be brought by and in the name of the person against whom the Director of Revenue determined the deficiency (or liability as the case may be) or whose petitioner for refund has been denied by the Director, or by and in full descriptive name of the fiduciary legally entitled to institute a proceeding on behalf of such person.

In the event of a variance in the name set forth in the notice of deficiency or liability, or notice of denial by the Director of Revenue of an application for a refund and the correct name, a statement of the reason for such variance shall be set forth in the petition.

VI. Initiation of a Proceeding - Pleading

6a. An appeal from the Director of Revenue shall be initiated by filing a petition with the secretary of the Board.

6b. Failure of a petitioner to comply with this rule or with Rule III shall be grounds for dismissal of the proceeding for failure properly to prosecute.

6c. Form of Petition:

1. The petition shall be substantially in accordance with Form A shown in the appendix.

2. It shall be complete in itself so as fully to state the issues.

3. The petition shall contain:

A. A caption.

B. Proper allegations showing jurisdiction of the Board.

C. A statement of the amount of the deficiency of liability determined by the Director of Revenue or the amount of refund which petitioner has claimed and which claim has been denied by the Director of Revenue, the nature of the tax, the taxable period involved and the amount thereof in controversy.

D. Clear and concise statements of each and every error which the petitioner alleges to have been committed by the Director of Revenue in the notice of the deficiency or denial of refund. Issues in respect of which the burden of proof is or may be by statute placed upon the Director of Revenue will not be determined, and will not be considered raised by the petitioner in the absence of assignments of error in respect thereof. Each assignment of error shall be numbered.

E. Clear and concise statements of the facts supporting each assignment of error upon which the petitioner relies.

F. A prayer setting for the relief sought by the petitioner.

G. The signature of the petitioner or that of his counsel.

H. A copy of the ~~notice from the Director of Revenue of the deficiency or liability or of the determination of the~~ Notice of Assessment of the deficiency or liability or claim for refund if any, and a copy of the Notice of Determination of the Director of Revenue upholding the assessment of tax or denying petitioner's application for a refund with accompanying statements, if any, so far as material to the issues set forth in the assignments of error shall be appended to the petition.

6d. Upon receipt of the petition initiating the appeal, the secretary of the Board shall ~~docket the appeal in a docket kept for that purpose and shall assign a number to the case. note the date and time of receipt on the petition and docket the appeal in a docket kept for that purpose. Where the petition is received by mail the envelope containing the postmark shall be retained. The case shall be assigned a number.~~ An original and eight copies of the petition shall be filed, one copy of which shall be promptly served by hand delivery by the secretary of the Board upon the Director of Revenue, or his designee.

6e. Within 20 days after service upon him of a copy of the petition, the Director of Revenue shall file an answer to the petition. The answer shall be so drawn as fully and completely to advise the petitioner and the Board of the defense. It shall contain specific admission or denial of each material allegation of fact contained in the petition and a statement of any additional facts upon which the Director of Revenue relies for defense or for affirmative relief or to sustain any issue raised in the petition in respect to which issue the burden of proof is or may be by statute placed upon the Director of Revenue. Paragraphs of the answer shall be numbered to correspond to those the petition to which they relate. An original and five copies of the Director of Revenue's answer shall be filed and the Director of Revenue shall serve one copy thereof on the petitioner or his counsel of record, in person or by mail.

6f. ~~The petitioner may serve and file a reply to the answer within 10 days after service on him of such answer. No reply to an answer is required, but the petitioner may serve and file a reply to the answer within 10 days after service on him of such answer.~~

6g. A proceeding shall be deemed to be at issue upon the filing of the reply, or, if no reply be filed, upon the

expiration of the time within which a reply may be filed.

6h. ~~A petitioner may, as of course, amend his petition at any time before answer is filed. After answer is filed, a petition may be amended only by consent of the Director of Revenue or by leave of the Board.~~

All motions to amend, made prior to the hearing must be accompanied by the proposed amendments or amended pleadings.

Upon motion made, the Board may, in its discretion at any time before the conclusion of the hearing, permit a party to a proceeding to amend the pleadings in stated petitions to conform to the proof.

When motions to amend are granted at the hearing, the amendment or amended pleadings shall be filed at the hearing or with the Board within such time as it may fix.

6i. The Board, upon motion of either party in which good cause is shown, or upon its own motion, may order a further and better statement of the nature of the claim or defense or of any matter submitted in any pleadings. Such a motion filed by a party shall point out the defects complained of and the details desired. If such order of, the Board is not obeyed within 15 days or within such other time as the Board may fix, the Board may strike the pleading to which the motion was directed or may make such other orders as it may deem just.

6j. If no reply is required by these rules, each and every material allegation of fact set out in the answer shall be deemed to be denied. Any new or affirmative matter contained in the reply shall be deemed to be denied.

6k. When an answer has been filed, each and every material allegation of fact set out in the petition and not expressly admitted or denied in the answer, shall be deemed to be admitted.

VII. Motion

7a. Motions must be timely and must fully set for the alleged reason for the action sought.

7b. The filing of a motion does not constitute cause for postponement of a hearing from the date set, unless such continuance is specifically ordered by the board following receipt of such motion.

7c. If a motion, other than one relating to the receipt of evidence during trial, is made orally during trial, the maker thereof shall promptly reduce it to writing and file it with the Board unless the Board otherwise orders.

7d. No motion for rehearing, further hearing or reconsideration may be filed more than 15 days after an order has been entered and no motion to vacate, modify, reconsider, or revise a final decision may be filed more than 15 days after the final decision has been entered. ~~See rule XIX concerning Orders and Decision.~~ The filing of a motion to vacate, modify, reconsider, or revise a final order shall toll

the running of the 30 day time period within which to file an appeal. The running of the 30 day time period within which to file an appeal shall commence with the entry of the Board's order denying such a motion.

7e. In the case of written motions, the moving party shall file an original and five copies with the Board.

VIII. Extension of Time

8. Subject to applicable statutory provision, continuances, extensions of time and adjournments may be ordered by the Board of its own motion or may be granted in its discretion on motion of any party.

IX. Service

9a. Every order required by its terms to be served, every pleading subsequent to the original petition, including proposed orders, unless the Board otherwise orders, every written motion other than the one which may be held ex parte and every written notice, appearance, demand, offer of judgment and similar papers shall be served upon each of the parties affected thereby, or upon counsel, if one has made an appearance, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided by these rules.

9b. Service may be made on the Director of Revenue in person, upon deputies duly designated by him to accept service or upon counsel appearing for him in the proceedings.

9c. Unless otherwise ordered, no pleading subsequent to the original petition, no brief, nor any other paper, shall be filed unless the original thereof shall have endorsed thereon a receipt of service of a copy thereof by all parties required to be served or it shall be accompanied by an affidavit showing that service has been made and how made.

X. Substitution of Parties Change of Names

10a. Successor fiduciaries: A motion shall be filed to substitute parties who are successor fiduciaries and in proper cases shall be supported by a certificate of the proper court or official showing the appointment and qualifications of the party who seeks to be substituted.

10b. Change of name: A motion shall be filed to amend the pleadings to show a change in the name of a corporation or other party and shall, in proper cases, be supported by an official certificate or copy of the decree or other document by which the change is effected, duly certified by the official having its custody.

10c. No certificate need be filed unless required by order of the Board, if the respondent consents to a change, as described in paragraph a and b above.

10d. Board order: The Board on motion of a party or

upon its own motion, may order the substitution of proper parties upon the death of a petitioner, where a mistake in the name of title of a party appears, or for other causes.

XI. Counsel Appearance, Withdrawal, Substitution, Change of Address

11a. Entry of appearance.

1. Counsel authorized to practice before this Board may enter his appearance by subscribing the initial petition.

2. Counsel may later make his appearance only by filing in duplicate, a notice of appearance which shall be filed by counsel individually, shall show his mailing address and shall state that he is entitled to practice before this Board.

3. Counsel not properly entitled to practice before this Board will not be permitted to appear except by leave of the Board granted at hearing and then only pursuant to Rule II.

11b. Withdrawal of counsel: Counsel of record in any proceeding desiring to withdraw, or any petitioner desiring to withdraw counsel of record, must file a motion with the Board requesting leave to withdraw, reciting that notice thereof has been given to the client or to the counsel being withdrawn as the case may be. The Board may in its discretion, deny such motion.

11c. Substitution of Counsel: New counsel may be substituted by appearance in lieu of previous counsel when it appears that previous counsel have or are withdrawing.

11d. Change of address: Notice of any change in the mailing address of either counsel or petitioners shall be filed promptly with the Board in duplicate. Separate notice shall be filed in each proceeding.

XII. Briefs

12a. At any time, upon motion by any party or on its own motion, the Board may require the filing of briefs on any of the issues before it. In such instances all briefs must be filed at least one week before the hearing on the issues briefed.

12b. The parties shall be prepared to make oral arguments at the conclusion of the hearing or to file written citations of authorities at the time if the Board so directs. The filing of briefs and the making of oral arguments shall be in accordance with the directions of the Board.

12c. All briefs shall conform to the provisions of Civil Rule 107(c) and (d) of the Superior Court of the State of Delaware: provided, however, the Rule 107(c)(3) shall not be construed as being applicable to proceedings before the Board.

12d. An original and five copies of all briefs shall be filed.

XIII. Subpoenas

13. The practice of the Superior Court of the State of Delaware in civil proceedings with respect to the issuance, service, proof thereof and returns of subpoenas is hereby adopted.

XIV. Discovery

14. The parties ~~are expected to~~ shall narrow the issues by stipulation of all facts which are not in controversy. ~~Discovery may be utilized only when the facts in issue cannot reasonably be stipulated to. Whenever discovery is appropriate the rules of the Superior Court of the State of Delaware in civil proceedings with respect to depositions upon oral examinations or written questions; written interrogatories; production of documents or things of permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission, as amended, shall apply to discovery procedures before this Board. Discovery in accordance with the civil rules of the Superior Court of the State of Delaware may be utilized only when the facts in issue cannot reasonably be stipulated to, and then only with consent of the parties and the approval of the Board, or by order of the Board after a request duly made by one of the parties.~~ Discovery in accordance with the civil rules of the Superior Court of the State of Delaware may be utilized only when the facts in issue cannot reasonably be stipulated to, and then only with consent of the parties and the approval of the Board, or by order of the Board after a request duly made by one of the parties.

Whenever discovery is taken appropriate the rules of the Superior Court of the State of Delaware with respect to depositions upon oral examinations or written questions; written interrogatories; production of documents or things of permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission, as amended, shall apply to discovery procedures before the Board.

The Board at a pre-trial conference held after the filing of the stipulated pre-trial order, or on motion of one or more of the parties may hold a discovery conference. After the discovery conference the Board shall enter an order identifying the issues for discovery, establishing a plan and schedule for discovery, setting limitations on discovery and determining other matters as necessary for the proper management of discovery in the action. The discovery order may be altered or amended as justice requires. The failure of

a party to make discovery after approval by, or order, of the Board including the failure of a party to comply with the Board's discovery order shall be grounds for the entry of a final order against the defaulting party for failure to properly prosecute the case.

XV. Pre-Trial Conference Procedure.

15. ~~At the discretion of the Board or upon written request of any party, pre-trial conferences may be scheduled for the purpose of determining factual and legal questions as issue between the parties. Such conferences shall be convened by a Board member designated by the Board upon 10 days written notice to all parties indicating the time and place of the conference. Issues considered and determined by the Tax Appeal Board will be limited to those raised at any such pre-trial conference. Except as provided in Rule XXIII, after the proceeding is at issue all counsel and any unrepresented parties shall confer with one another for purposes of:~~

1. Expediting the disposition of the action;
2. Discouraging wasteful pretrial activity, including unnecessary discovery;
3. Considering and taking action with respect to the items set out in Superior Court Civil Rule 16(c).
4. Facilitating a settlement of action.

Within 90 days of the filing of an answer, or the filing of a reply to an answer, the parties shall file a stipulated pre-trial order for entry by the Board. The order shall contain a statement that the parties have conferred as required by this rule, the parties' agreement with respect to the items set out in Superior Court Civil Rule 16(c), and the parties' proposed schedule for the filing of case dispositive motions or for trial. Where a party is unrepresented the order shall recite that the unrepresented party is aware of his right to appeal a decision of the Tax Appeal Board and that any such appeal will be limited to the record made before the Board. The order shall be substantially in accordance with Form D shown in the appendix. The order may be freely amended by agreement of the parties or by application to the Board in its discretion. A copy of Superior Court Civil Rule 16 is located at the end of these rules as Exhibit B.

After the receipt of the stipulated pre-trial order the Board may in its discretion or upon the motion of a party hold a pre-trial conference for any of the reasons enumerated in Superior Court Civil Rule 16. The issues considered and determined by the Board at trial will be limited to those raised at any such pre-trial conference, the parties stipulated pre-trial order not withstanding.

XVI. Hearings, Attendance Continuances

16a. All parties shall be given at least 10 days notice of the time set for hearing on the appeal, motions, or the other proceedings before the Board.

16b. The unexcused absence of a party or his counsel at the time and place set out in the notice of hearing described in sub-paragraph (a) above will not be an occasion for delay. The proceeding may be dismissed for failure properly to prosecute or the hearing may proceed and the case be regarded as submitted on the part of the absent party or parties.

16c. The Board may require appearance for argument or it may accept briefs in lieu of personal appearance.

16d. Any proceeding, not requiring a hearing for submission of evidence (where sufficient facts have been admitted, stipulated or included in the record in some other way), may be submitted at any time on notice submitted to the Board and signed by all parties interested. The parties need not appear in person. The Board will then proceed to the consideration of the matter and upon request of the parties or on its own motion will fix a time for the filing of briefs.

A contested motion, not predicted upon an issue of fact, may be submitted in the same way.

16e. Hearings before the Board shall be stenographically reported.

XVII. Evidence and the Submission of Evidence.

17a. The proceedings of the Board on hearings will be conducted in accordance with the rules of evidence applicable in the Superior Court of the State of Delaware.

17b. The parties by stipulation in writing filed with the Board presented at the hearing may agree upon any facts involved in the proceeding. Stipulations filed need not be formally offered to be considered in evidence. Both parties shall endeavor to stipulate evidence to the fullest extent to which either complete or qualified agreement can be reached. If all evidence lending itself to stipulation, for example, entries or summaries from books of account and other records has not been stipulated at the time the notice of the date of the hearing is mailed, then the party desiring to introduce such evidence shall confer with the opposing party or his counsel promptly after the receipt of the hearing notice in an effort to stipulate such facts. Any objection to the relevance of the particular part or all of the stipulation should be noted in the stipulation but the Board will give consideration to any objection to irrelevancy of stipulated facts made at the hearing. The Board may set aside a stipulation where justice requires but may refuse to receive evidence tending to qualify, change, or contradict any fact

properly introduced into the record of stipulation.

17c. Testimony taken by deposition or written interrogatories will not be considered until offered and received in evidence.

17d. Documentary evidence.

1. When books, records, papers or documents have been received in evidence, a copy thereof or so much thereof as may be material or relevant may, in the discretion of the Board, be substituted therefor.

2. After the decision of the Board in any proceeding has become final, the Board may, on motion, permit the withdrawal by the party entitled thereto of original exhibits, or the Board may, on its own motion make such other disposition thereof as it deems advisable.

XVIII. Burden of Proof

18. ~~The burden of proof shall be upon the petitioner except as otherwise provided by statute, and except that in respect of any new facts or issues pleaded in his answer it shall be upon the respondent.~~ In any proceeding before the Tax Appeal Board the burden of proof shall be on the taxpayer, except that the burden of proof with respect to whether the taxpayer has been guilty of fraud, or whether the petitioner is liable as the transferee of property of a taxpayer shall be on the Director.

XIX. Orders and Decisions

19a. The Tax Appeal Board shall enter an Order upon each decision or determination disposing of any case or matter. If the Board so specifies therein, its signed letter or opinion indicating a decision or determination shall constitute its Order; but such opinion, decision or determination may be rendered orally to the stenographic reporter, and if so specified by the Board, shall be deemed its Order.

19b. If the Board shall render a decision or determination or opinion as above provided in paragraph (a) but does not specify it as an Order, no later than ten days thereafter a written Order disposing of the matter shall be entered by the Board upon notice as hereinafter provided.

19c. For all purposes the effective date of an Order of the Board shall be:

1. If written, the date of Order which the document contains:

2. If oral (and deemed an Order under 19a above), the Order date specified by the Board, which may be the same date rendered if the Board is satisfied that all interested parties affected thereby or their authorized representatives are either present at the hearing at which rendered, or had due notice of the hearing.

19d. Unless a written Order of the Board bears upon its facts the consent, approval as to form, or acknowledgment of receipt of a copy thereof, signed by each interested party or his authorized representative, notice of the Board's Order shall be given by mailing postage prepaid and addressed to the addresses of record in the case, or hand delivering, a copy thereof to each such party or representative not less than three nor more than five days prior to the effective date of the Order.

19e. The Board may require presentation of a proposed Order or Orders disposing of any case or matter.

19f. So long as the board finds it to be administratively practicable, the Board shall endeavor to render a decision or determination or opinion with respect to any case or matter within 120 days of the matter being submitted to the Board. For purposes of this rule a matter is not deemed to be submitted to the Board until all briefing or supplemental briefing and the hearing described in Rule 16 (if any) has been completed. Failure of the Board to render such decision or determination or opinion within such prescribed time shall not alter or affect the rights of any party before the Board.

19f g. Nothing in the foregoing paragraphs shall be construed to limit or otherwise affect the application of Rule XX (concerning computation of amount).

XX. Computation of Amount

20. Where the Board has promulgated or entered its opinion determining the issues in proceeding, it may withhold entry of a final order for the purpose of permitting the parties to submit computations pursuant to the Board's determination of the issues showing the correct amount of the deficiency, abatement, overpayment or other sum to be entered as the decision. If the parties are in agreement as to the amount to be entered in the decision of the Board, then all of them shall file promptly with the Board a computation showing the amount of deficiency, abatement, overpayment or sum and that there is no disagreement that the figures shown are in accordance with the decision of the Board. The Board will then enter its final order. If however, the parties are not in agreement as to the amount of the figures to be entered as the decision in accordance with the opinion of the Board either of them may, after service as provided in Rule IX upon all interested parties, file with the Board a computation of the deficiency, abatement, overpayment or other sum believed by him to be in accordance with the opinion of the court. The secretary of the Board will place the matter upon the calendar of the Board for argument and will notify the parties in interest. If no opposing party files an objection accompanied by an alternative computation at

least five days prior to the time of such argument or continuance thereof, the Board may enter its final order in accordance with the computation already submitted.

Any argument under this rule will be confined solely to the consideration of the correct computation resulting from the opinion already rendered. No argument will be heard upon or consideration given to the issues or matters already disposed of. This rule is not to be regarded as a substitute for a motion for rehearing, reargument or reconsideration.

XXI. Rehearing and Rearguments

21. Rehearings, rearguments, further hearing and other supplementary or additional proceedings shall be granted under such circumstances and upon such terms as the board deems to be just. See Rule 7e for the time with which motions for such additional proceedings must be filed.

XXII. Computation of Time

22a. ~~In computing any period of time prescribed or allowed by these rules, by Order of the Tax Appeal Board or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day, which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall exclude in the computation. As used in this Rule, "legal holidays" shall be those days provided by statute or appointed by the Governor of the State of Delaware.~~ In computing any period of time prescribed by these rules, by Order of the Tax Appeal Board, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be counted. When the last day prescribed by these rules, Order of the Board, or by any applicable statute, including any extension of time, falls on a Saturday, Sunday, or legal holiday the performance of the act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the calculation. As used in this Rule, "legal holidays" shall include those days provided by statute or designated by the Governor of the State as legal holidays.

22b. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a Notice or other paper upon him and the Notice of paper is served upon him by mail, three days shall be added to the prescribed period.

XXIII. Procedure in Small Cases

23a. A small case is:

1) any appeal from a determination of the Director of Revenue where the total tax assessed or the refund claimed is less than \$2500.00, exclusive of any interest or penalty; or

2) any appeal from a determination of the Director of Revenue where the only issue is whether the taxpayer is liable for a penalty; or

3) any appeal from a determination of the Director of Revenue where the controversy involves the payment of interest in an amount less than \$2500.00.

The Tax Appeal Board after considering the issues raised by petition and the answer may in its discretion designate a case as a small case.

23b. Rule 15 shall not apply to a small case.

23c. In a small case the Tax Appeal Board shall hold a pre-trial conference. At the pre-trial conference the Tax Appeal Board shall consider the items set out in Superior Court Civil Rule 16 and enter an order expediting any necessary discovery which shall be limited, and scheduling the case for trial. The Tax Appeal Board where appropriate may hear case dispositive motions at oral argument without the filing of briefs.

XXIV. Cases Not Provided For

24. Where these rules are silent or do not otherwise provide for a matter, the Superior Court Civil Rules shall govern to the extent they provide for the matter.

XXV. Call of the Board's Docket

25a. Each year at the Board's first meeting following the close of the State's fiscal year the Board shall call the docket of pending cases. The Board may by order fix different or additional dates for such purpose. The secretary of the Board shall prepare a list of all cases wherein no action has been taken for more than 180 days or more prior to the time fixed for the call of the docket, and at least 10 days prior thereto, shall mail to each attorney of record, representative of the taxpayer, or the taxpayer as the case may be, notice of the time and place for calling the docket. The purpose of calling the docket is primarily to determine whether there has been undue delay in connection with pending matters.

25b. At the call of the docket attorneys and other representatives will be expected to be present and to explain the status of the case and any apparently undue delay. The Board may take such action as it deems to be in the best interests of the proper administration of justice, including the dismissal of an action where appropriate.

**FORM A - 1
PETITION - INDIVIDUAL
DEFICIENCY**

NOTICE OF APPEAL TO TAX APPEAL BOARD

(Name)
Petitioner,

V. Docket No.

Director of Revenue,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Director of Revenue in his notice of ~~assessment~~ determination dated (month, day, year), and as a basis of this proceeding alleges as follows:

1. The petitioner is an individual with residence at (street, city, state, zip code).
2. The notice of assessment (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on (month, day, year).
3. The notice of determination (a copy of which is attached and marked Exhibit B) was mailed to the petitioner on (month, day, year).
- 3 4. The taxes in controversy are income taxes for the calendar year 19__ for \$_____.
- 4 5. The determination of tax set forth in said notice of determination is based upon the following errors:
 - a. _____.
 - b. _____.
 - c. _____.
6. The facts upon which the petitioner relies as the basis for this proceeding are as follow:
 - a. _____.
 - b. _____.
 - c. _____.

Wherefore, the petitioner prays that this Board may hear the proceedings and abate the aforesaid assessment and grant such other relief as may be just and proper.

(Signature)
Petitioner or Counsel for Petitioner

Address

FORM A-2
PETITION - HUSBAND AND WIFE
JOINT RETURN
DEFICIENCY

FORM A-4
PETITION - CORPORATION
DEFICIENCY

NOTICE OF APPEAL TO TAX APPEAL BOARD

NOTICE OF APPEAL TO TAX APPEAL BOARD

(Names)
Petitioners,

(Name)
Petitioner,

V. Docket No.

V. Docket No.

Director of Revenue,
Respondent.

Director of Revenue,
Respondent.

PETITION

PETITION

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Director of Revenue in his notice of assessment determination dated (month, day, year), and as a basis of this proceeding alleges as follows:

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Director of Revenue in his notice of assessment determination dated (month, day, year), and as a basis of this proceeding alleges as follows:

- 1. The petitioners husband and wife with residence at (street, city, state, zip code).
2. The notice of assessment (a copy of which is attached and marked Exhibit A) was mailed to the petitioners on (month, day, year).
3. The notice of determination (a copy of which is attached and marked Exhibit B) was mailed to the petitioners on (month, day, year).
3 4. The taxes in controversy are income taxes for the calendar year 19__ for \$__.
4 5. The determination of tax set forth in said notice of determination is based upon the following errors:
a.
b.
c.

- 1. The petitioner is a corporation with its principal place of business at (street, city, state, zip code).
2. The notice of assessment (a copy of which is attached and marked Exhibit A) was mailed to the petitioners on (month, day, year).
3. The notice of determination (a copy of which is attached and marked Exhibit B) was mailed to the petitioners on (month, day, year).
2 4. The taxes in controversy are income taxes for the calendar year 19__ for \$__.
3 5. The determination of tax set forth in said notice of determination is based upon the following errors:
a.
b.
c.
4. 6. The facts upon which the petitioners relies as the basis for this proceeding are as follow:
a.
b.
c.

- 6. The facts upon which the petitioners relies as the basis for this proceeding are as follow:
a.
b.
c.

Wherefore, the petitioners pray that this Board may hear the proceedings and abate the aforesaid assessment and grant such other relief as may be just and proper.

Wherefore, the petitioner prays that this Board may hear the proceedings and abate the aforesaid assessment and grant such other relief as may be just and proper.

(Signature)
Petitioners or Counsel for Petitioner
(Signature)
Petitioner
Address

(Corporate Name)
Petitioner or Counsel for Petitioner
By: (Signature), (Title)

Address

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 505 (31 Del.C. 505)

PUBLIC NOTICE

Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Non-Emergency Transportation Provider Specific Manual.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by January 31, 2000.

NON-EMERGENCY MEDICAL TRANSPORTATION PROVIDER POLICY

I. GENERAL INFORMATION

In accordance with Federal Regulation, 42 CFR 431.53, the Delaware Medical Assistance Program (DMAP) will assure transportation for eligible Medicaid recipients who need to secure necessary medical care and who have no other means of transportation. The DMAP is designed to assist eligible Medicaid recipients in obtaining medical care within the guidelines specified in this policy.

The DMAP defines non-emergency medical transportation services as transportation to or from medical care for the purpose of receiving treatment and/or medical evaluation. The DMAP will determine the transportation provider to be in compliance with this policy as long as the transport is to or from a medical service.

The DMAP assigns a unique provider number ending with "15" to each non-emergency transportation provider enrolled with the DMAP.

Scope of Service

The DMAP covers transportation by way of automobile, van, and taxi service for eligible Medicaid clients from the point of pickup to the medical provider location or from the medical provider location to the point of delivery. The

service will include all vehicles, drivers, dispatch, vehicle maintenance, fuel, lubricants, and any and all other components necessary to provide a transportation service for the needs of the DMAP client.

Automobile

The DMAP covers transportation by way of an automobile when the automobile is a passenger vehicle that carries no more than five riders.

Van

Transportation by way of a van is covered by the DMAP if the van is a vehicle that can accommodate more than five occupants.

Taxi

The DMAP will cover transportation by way of a taxi if the vehicle is chartered by the Department of Transportation (DOT) and if the taxi can provide short-response service.

The DMAP covers reimburses the transportation for an individual to escort responsible for the care of a Medicaid client to medical services who is unable or too young to travel alone. Transportation shall be provided to the individual to receive medical instructions in the care of the Medicaid client or to visit the Medicaid client when they are hospitalized. The transport will be considered a service to the Medicaid client and therefore must be billed using the Medicaid ID# of the hospitalized client. The transportation provider must fully document these transports. The documentation must include the name(s) of those being transported and the reason they are being transported. The provider must bill these transports using the appropriate HCPCS procedure code found in Appendix A. In cases when there are two persons responsible for the care of a Medicaid client and both are transported, the provider must use the appropriate HCPCS procedure code with the modifier Y1. Transportation services will also be reimbursed for up to two individuals responsible for the care of a Medicaid client to receive medical instructions in the care of the client or to visit the Medicaid client when they are hospitalized. Because transportation of the responsible individual is considered a service to the Medicaid client, it must be billed using the Medicaid ID# of the recipient of the medical service. Documentation in the billing records must include the names of the escorts or care givers being transported and the reason for the transportation. Provider will use the appropriate HCPCS procedure codes found in Appendix A.

Definitions

Non-emergency medical transportation services are defined as transportation to or from any medical service for the purpose of receiving treatment and/or medical evaluation.

The following definitions pertain to non-emergency medical transportation only.

Escort is an interested individual that must accompany a recipient due to recipient's physical/mental/developmental capacity. Examples of an escort include, but are not limited to, a parent, guardian, or an individual who assumes parental like responsibility, or a child of a geriatric parent. The escort's presence is required to ensure that the recipient receives proper medical service/treatment. ~~Refer to Appendix A, modifier Y1 for billing information.~~

Rideshare: A rideshare participant is a client who is able to share a ride with another client because their route and time coincide.

Limitations and ExclusionsExclusions

- The DMAP will not reimburse for services in which prior approval is required but was not obtained.
- The DMAP will not be reimburse for services that are not medically necessary or which are not provided in compliance with the provisions of the Program.
- The DMAP will not reimburse for taxi service that is to/from on-going or reoccurring services such as, but not limited to: Methadone Clinics, Community Mental Health, physical, occupational, and speech therapy.

II. PROVIDER PARTICIPATION RESPONSIBILITIES

As a provider of non-emergency transportation services, it is the responsibility of the provider to abide by the following policies and procedures of the DMAP. This includes, but is not limited to:

- The provider is responsible for maintaining complete and accurate records of operational and administrative costs, and records that validate provider billing and utilization of services. This material will be made available to authorized representatives of the DMAP for review and audit.
- The provider is responsible for arranging and providing transportation services for DMAP recipients as follows:

1. At the time of request for transportation the provider shall complete a Transportation Scheduling Form (see Appendix B) to accurately reflect the reason for the transport and to detail all information received from the recipient regarding the transport. The completion of the Transportation Scheduling Form will assist the transportation provider with a profile of the recipient and will help in determining the recipient's needs (if any);

2. Verify individual's DMAP eligibility. The provider may contact ~~Confirm~~ the Automated Voice Response (AVR) service to verify an individual's eligibility;

VI. REIMBURSEMENTVehicles Other Than Taxi

Non-emergency medical transportation providers, ~~except taxi providers,~~ are reimbursed a ~~prospective rate per mile based on reported historic costs (cost reports).~~ A regional base rate plus a universal rate per mile. Rates will be reviewed annually. Regions are defined as the three counties in the State of Delaware.

Escorts, when needed, and rideshare participants will each be reimbursed the regional base rate. Mileage will be reimbursed only for the client located the most distance from the service provider.

The DMAP will pay a differential rate added to the base rate for service provided between 6 PM and 6 AM weekdays and 24 hours on the weekends and holidays.

The DMAP will pay a differential rate for transportation service provided in a vehicle equipped with a wheelchair lift and occupied by a client that is non-ambulatory.

Reimbursement is full and represents ~~includes~~ all vehicles, drivers, dispatch, vehicle maintenance, fuel, lubricants, and all operational and administrative costs ~~components~~ necessary to provide medical transportation services.

Taxi Providers

Non-emergency medical transportation by taxi is reimbursed at the metered rate for a trip with one client in the cab.

Taxi providers may be reimbursed for rideshare participants in addition to their usual and customary fee.

Reimbursement is full and represents all vehicles, drivers, dispatch, vehicle maintenance, fuel, lubricants and all operational and administrative cost necessary to provide medical transportation services.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 505 (31 **Del.C.** 505)

PUBLIC NOTICE**Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its 1115 Demonstration Waiver.

Under the authority of the Balanced Budget Act of 1997, the State of Delaware, Department of Health and Social Services, Medicaid Program, is requesting an extension of its 1115 Demonstration Waiver to provide managed care services to the majority of Medicaid eligible individuals, known as the Diamond State Health Plan.

Under the current waiver authority, the Diamond State Health Plan is authorized until March, 2001. The Balanced Budget Act of 1997 waiver authority will allow the program to continue, without re-authorization, until March 1, 2004. The State intends no changes to the Diamond State Health Plan during the extension period.

All questions and/or comments should be directed in writing no later than January 31, 2000 to:

Ms. Kay Holmes,
Chief Administrator for Managed Care
Medical Assistance Programs
Division of Social Services
P.O. Box 906
New Castle, DE 19720

**DEPARTMENT OF
TRANSPORTATION**

Statutory Authority: 17 Delaware Code,
Section 146(a) 17 **Del.C.** 146(a))

**STATEWIDE ACCESS MANAGEMENT POLICY
STATEWIDE CLASSIFICATION MAPS**

The Delaware Department of Transportation (DelDOT) is announcing the release of the Statewide Access Management Policy (Policy) and Statewide Classifications Maps (Classification Maps) for public review. The Department will also hold a public hearing on these items prior to adopting them in their final form.

The Policy, which follows below, was developed in accordance with Delaware Code, Title 17, Chapter 146(a) and provides a combination of regulatory and administrative actions that will help determine how and where connections are made between land developments and the transportation system. The Classifications Maps show how the Policy will be applied to individual state-maintained roadways.

The public hearing will be held on February 1, 2000 at the DNREC Auditorium, 89 Kings Highway, Dover. DelDOT staff and a court stenographer will be available starting at 5 p.m. to provide background information and take statements for the record. The formal auditorium portion of the hearing will start at 7 p.m. with a short presentation by DelDOT staff and testimony from the public taken immediately after. Written comments on the Policy and Classification Maps will be taken through February 21, 2000 and may be submitted along with questions or other written material, by mail to the Office of External Affairs, DelDOT, P.O. Box 778, Dover, DE 19903 or by telephone at 1-800-652-5600.

After receipt of comments at the hearing as well as receipt of any written comments on or before February 21, 2000, the Department will issue a final regulation adopting the Policy and Classification Maps, in accordance with the Administrative Procedures Act (29 Delaware Code, Chapter 101 et. seq.).

For more information on the public hearing, or to receive copies of the Classifications Maps or additional copies of the Policy beginning after January 1, 2000, please contact Mr. Joseph Cantalupo at (302) 760-2121.

In accordance with Subsection 8409, Chapter 84, Title 29 of the Delaware Code, our public meetings are designed to ensure that the public has ample opportunity to participate in the transportation planning process. If requested in advance, DelDOT will make available the services of an interpreter for the hearing impaired. If an interpreter is desired, please make the request by phone or mail a week in advance through the office of External Affairs as noted

above.

1. INTRODUCTION

AUTHORITY

Pursuant to Delaware Code, Title 17, Chapter 146, the State of Delaware Department of Transportation, Division of Highways is charged with the responsibility of controlling all access onto state-maintained highways. In pertinent part this section reads:

“(a) The Department is authorized to adopt standards and regulations for the location, design, construction, reconstruction, maintenance, use and control of vehicular and pedestrian access to and from any State Maintained Highway in order to protect public safety, to maintain smooth traffic flow, to maintain highway right-of-way drainage, to regulate drainage from property leading into or carried by the highway drainage system and any other public purpose, as determined by the Department.”

PURPOSE

The purpose of this Policy is to describe how transportation access shall be provided to properties located along Delaware’s streets, roads and highways. The Policy provides guidance regarding how efficient transportation access, including automobile, public transportation, bicycle and pedestrian access, shall be considered during the review of development and entrance applications. It sets forth highway access management policies, procedures and standards required to protect public safety, maintain efficient transportation operations, maintain highway right-of-way drainage, protect the functional integrity of the state’s arterial highways, and provide reasonable access to abutting property.

This Access Management Policy is one tool the Delaware Department of Transportation will use to achieve the following goal of the Statewide Long-Range Transportation Plan:

“To provide a safe transportation system that supplies a level of access and mobility that sustains or improves 1995 levels.”

The following text is drawn from the Department’s Statewide Long-Range Transportation Plan and provides definitions of both access and mobility.

“Mobility is an attribute of people and goods. It describes an individual’s or a good’s ability to move throughout his/her community and the state with safety and efficiency. Mobility is measured in terms of travel time, comfort, convenience,

efficiency, safety and cost.

Access is an attribute of places and describes the relative ease with which a location or destination can be reached. Access is measured by the availability of travel options, length of trips and ease of movement.”

This Policy seeks to reflect and support the focus on access and mobility that is contained in the Statewide Long-Range Transportation Plan and to further the realization of the goals contained in the plan.

This Policy establishes an access classification system and procedures to implement a multimodal access management program for Delaware. Corresponding design standards and regulations associated with this Policy will be contained in a companion manual entitled, *The Access Management Technical Design Manual*.

COMPUTATION OF TIME

Unless otherwise noted, all references to time in this Policy shall be calculated as calendar days.

2. ACCESS MANAGEMENT AND HIGHWAY FUNCTIONS

PROPERTY RIGHTS AND ACCESS MANAGEMENT

Access Management programs by state Departments of Transportation are implemented under two basic legal powers: the police power and the power of eminent domain. *Police power* is the ability of a state (or other jurisdiction) to legislate and enforce restrictions on behalf of the public health, safety and welfare. *Police powers* are regulatory powers and through lawful exercise are non-compensable restrictions of citizen’s rights. Police powers can not deny a citizen due process of law, nor can they take or demand property. Therefore, any regulations regarding access management can not completely deny access to property. Compensation is required if reasonable access to property is not provided. Within Delaware and in other states, property owners have the right of reasonable access to the general system of streets and highways. However, a property owner does not have the right to unlimited access, to access at any one particular location or to any type of design desired. Controls over how access is provided to property may be regulated to protect the public’s health, safety and welfare .

Under this Access Management Policy, land parcels that have insufficient frontage and can not meet the entrance spacing requirements (called “non-conforming land parcels” by this Policy) *are not* denied reasonable access to the transportation system. This Policy Implement recognizes that the division of land has a long history in Delaware and that many lots may have insufficient frontage to accommodate safe motor vehicle access. Restrictions on the

intensity of motor vehicle trips generated from such a lot are appropriate unless the property owner works with adjacent land owners to share motor vehicle access or can make use of reasonable alternative access. Further discussion of the provisions of this Policy as it pertains to “non-conforming parcels” can be found in the subsection entitled, “Non-Conforming Land Parcels”.

The power of *eminent domain* allows a state to take private property for public use if the owner is compensated for the loss. Under eminent domain powers, access rights may be acquired to enhance an existing or proposed transportation project. Eminent domain may be used to acquire land or rights of land in order to build service or frontage roads, buy abutting property, acquire additional rights-of-way and/or take some or all of the access rights associated with a parcel.

Role of Access management

An important role of access management is to protect the functional integrity of roadways. As a general principal, arterial roadways require that substantial controls be established over how access is provided to assure that the movement function and capacity of the roadways is maintained. Conversely, local streets and roads require that controls be established over through-movements by motor vehicles to assure that the environment of neighborhoods and commercial districts is protected from the impacts of non-local motor vehicle travel.

As a result, the Department of Transportation’s access management Policy utilizes roadway function as one criteria to determine how access to property abutting streets and highways should be regulated.

AREA CLASSIFICATION

In addition to the function of a roadway, the Access Management Policy takes into account the type of area within which a roadway is located. For this purpose the Policy utilizes two descriptions of areas – transportation investment areas and centers.

Transportation Investment Areas

Transportation Investment Areas, defined in DeIDOT’s Statewide Long-Range Transportation Plan, provide a planning based methodology for classifying all areas throughout Delaware based on the types of transportation investment and management strategies which should be applied in each area. Transportation Investment Area (TIA) designations help to direct transportation investments in a manner which will support local growth management and economic development goals. DeIDOT’s Statewide Long-Range Plan proposes initial delineation of TIAs. However to be fully effective, counties and municipalities need to further define these boundaries based on local knowledge and community input. The TIA framework should be

incorporated into the Counties’ Comprehensive Plans and any Municipal Comprehensive Plans that are developed.

The following text is drawn from the Department’s Statewide Long-Range Transportation Plan and provides additional definition to the function which TIAs will play in future decision making.

“TIAs are geographically defined areas that will be targeted for Multimodal, Management and Preservation strategies. Multimodal TIA investments shall be developed for existing municipalities, urban areas, and other County Designated Growth Areas that focus on long term sustainability and providing modal choices. Reducing Single-Occupant-Vehicle (SOV) trips is most important in Multimodal TIAs where growth, expansion and economic development are focused. The implementation of transit, bicycling and pedestrian improvements will be used as Congestion Management Tool, and will focus on reducing the impacts of SOV trips in these areas. Management TIA investments shall be developed that maintain existing transportation elements, protect the public investment in existing transportation capacity, increase the effectiveness of existing facilities and services, and conserve land as a resource for future infrastructure needs. Investments for Preservation TIAs, which may be corridors or areas, shall be developed that strive to protect transportation system investments, the natural environment and the character of unique existing transportation facilities.”

Centers

Within each TIA, there are higher density areas that have, or will have, distinctly different transportation characteristics and that should as a result be managed differently. These areas are entitled *Centers* in this Policy. Centers include the central core district or districts of a city, town or village. Centers typically contain commercial and cultural services and neighborhood service areas. Centers also include any other place that has been designated a “center”, either existing or planned, by the most recent Comprehensive Plan for a County, if the center is in an unincorporated area of the state, or by the most recent Comprehensive or Master Plan for the municipality if the center is in an incorporated area of Delaware. Centers are compact forms of development; they are *places* (such as town centers, village centers) while TIAs are *areas*.

Pedestrian trips constitute a substantial portion of all travel within centers because of the concentration of trip ends and the mix of land uses in centers. Because of the shorter distances between land uses that are typical of centers, transit and bicycles also play an important

transportation role. As a result, in centers, arterial streets and highways must be managed differently, both to facilitate the large number of trip ends and to maximize transit, pedestrian and bicycle movements. Because of the critical role which centers can play in fostering an efficient, multi-modal transportation system, the Access Management Policy proposes special standards that should apply to streets, roads and highways located within centers.

Summary

This Policy recognizes four (4) distinct land area classifications for use in access management. They are as follows:

1. Multimodal Transportation Investment Areas;
2. Management Transportation Investment Areas;
3. Preservation Transportation Investment Areas;
4. Within each TIA, Centers, as defined above, may apply.

3. CLASSIFICATION CRITERIA AND PROCESS

This section sets forth how the Access Management Policy will utilize functional and area classifications to determine how specific highway segments should be managed. This section:

- describes how roadway segments will be classified,
- presents the access level classifications that will be assigned to roadway segments for purposes of access management, and;
- presents a description of requirements that will be applied by the Department during the review of developments and in response to any applications for highway entrance permits.

Each roadway segment under the jurisdiction of DelDOT will be classified into one of six Access Levels based on the following criteria:

- (1) current functional class;
- (2) intended future function;
- (3) degree of urbanization;
- (4) center designation (either existing or planned center); and,
- (5) transportation investment area designation.

The Classification Process shall address the intended function of each roadway, not merely present conditions. The process shall be applied to highways based upon the most recently adopted Comprehensive Plan for the area and the Delaware Department of Transportation's Statewide Long-Range Transportation Plan. The process, as defined, seeks to anticipate the access and mobility requirements of future development patterns.

A description of the procedures to be used in classifying

roadway segments is presented at the end of this section following the description of Access Levels.

ACCESS LEVELS

Access Level 1

This access level applies to freeways, including Interstate Highways. Highways that have been designated by the Department as controlled-access facilities pursuant to 17 Del. C. 172 shall be classified as Access Level 1. This is the most restrictive access level. Land development shall not be oriented directly to an AL1 highway.

Motor Vehicle, Transit and Non-Motorized Access

Direct motor vehicle access to or from these highways is prohibited. Indirect motor vehicle access may be permitted from existing or proposed interchanges. .. Interchanges shall meet spacing standards and demonstrate overall regional benefits. Controlled-access highways may be designated for bicycle use by the Department pursuant to 21 Del. C. 4126. For AL1 highways on the Interstate System, interchanges require approval of the FHWA. Typically, this access level requires deeded access rights.

Access Level 2

This access level applies to expressways and some strategic principal arterial highways where the speed, volume, intersection proximity or safety conditions make it undesirable to provide direct motor vehicle access to property. Land development should not be oriented directly to AL2 highways but instead to intersecting streets.

Motor Vehicle Access

Where a property owner retains the right-of-access and where no alternative access is available, interim, right-in, right-out motor vehicle access will be allowed, pending the provision of alternative motor vehicle access. All lots fronting AL2 highways shall be considered non-conforming lots if direct, interim, right-in, right-out motor vehicle access is allowed.

Transit and Non-Motorized Access

Where transit stops are located within the AL2 highway right-of-way, developers of property abutting the highway right-of-way in a one-quarter mile radius from the transit stop, shall provide pedestrian pathways along their frontage and through their development to provide pedestrian connections to adjacent property and to facilitate continuous, direct and convenient pedestrian pathways to and from the transit stop.

The Department may require developments located within one-quarter mile of an at-grade intersection to incorporate connecting sidewalks if the Department has determined that pedestrian activity is anticipated at the intersection. Where the Department has determined that

pedestrian activity is likely, the at-grade intersection shall be designed to accommodate pedestrian crossings of the AL2 highway, either at-grade or via a grade-separated facility. Similarly, if the Department has determined that bicycle activity is likely at the at-grade intersection, the intersection shall be designed to accommodate bicycle crossings of the AL2 highway and developers of abutting property shall be encouraged to provide bicycle parking facilities.

Where the AL2 highway can accommodate bicycle use as determined by the Department, developers of adjacent property abutting the AL2 highway right-of-way shall be encouraged to provide bicycle parking facilities on their property, and the layout and design of internal site circulation shall accommodate bicycle use.

Access Level 3

This access level applies to strategic arterial highways that are not classified as AL2 highways -- typically divided highways of major significance, many of which are on the National Highway System.

Motor Vehicle Access

The Department will discourage direct motor vehicle access to developments located along Access Level 3 highways. If sufficient spacing is available, and if there is no reasonable alternative access to the property, interim direct motor vehicle access shall be permitted, but such an entrance shall be restricted to widely-spaced right-turn movements only, and the entrance must incorporate auxiliary lanes and must be separated from adjacent intersections to ensure no overlap of merging or diverging motor vehicle traffic.

Where major developments are provided with direct motor vehicle access to the AL3 highway they may also be required to provide alternative access to streets having controlled intersections with the strategic highway. The alternative access is needed to accommodate left turn movements into and out of the development. Without alternative access, high demand will be created for U-turns at available crossing locations. Where sufficient motor vehicle entrance spacing is not available, a property shall be considered non-conforming and new motor vehicle trips from such a non-conforming lot shall be limited.

Reasonable alternative motor vehicle access via intersecting or parallel streets (such as service or frontage roads) with lower access classifications shall be used if and when available. The Department will proactively seek and facilitate cross-access easements along AL3 highways.

Direct motor vehicle access to the AL3 highway may be closed if reasonable alternative access becomes available.

Transit and Non-motorized Access

In Multimodal TIAs, developers of property fronting on AL3 highways shall provide parallel facilities off the right-of-way to serve bicyclists and pedestrians, to improve access

to transit services (either existing or planned) and to provide multimodal access through and onto the property and to adjacent development. Where transit stops are provided, safe and convenient pedestrian crossing opportunities must be provided as well.

In all TIAs, where a transit stop is located on the AL3 right-of-way, or where a transit stop is located on land adjacent to the AL3 highway right-of-way, all developers of property located within one-quarter mile radius of the transit stop shall provide sidewalks along their frontage. Developers shall also provide pedestrian pathways into their development and through their development to provide connections to adjacent property.

In Multimodal TIAs, where a property is allowed interim, right-in, right-out motor vehicle access, bicycle use of the motor vehicle entrance or entrance(s) must be accommodated (for movements of bicyclists into the property as well to safely cross the motor vehicle entrance) and the site shall be designed to accommodate safe bicycle circulation. Bicycle parking facilities shall be encouraged.

Similarly, where a bicycle lane is provided by the Department along an AL3 highway in any TIA, any motor vehicle entrance intersecting such bicycle facility must accommodate safe bicycle travel. Bicycle parking facilities shall be encouraged.

In Multimodal TIAs, all at-grade intersections shall be designed to accommodate pedestrian crossings of the AL3 highway, either at-grade or via a grade-separated facility. In other TIAs, if pedestrian activity is anticipated, including locations where transit stops are provided or where sidewalks are provided, pedestrian crossings of the AL3 highway must be accommodated.

Access Level 4

Access Level 4 highways consist of major streets and highways that shall be managed to encourage pedestrian activity and facilitate the use or future development of transit services. The standards associated with AL4 roadway design will be applied to designated AL4 highways even though regularly scheduled transit service may not currently operate along the highway. Roadway design standards for AL4 highways and complementary urban design principals can be found in the companion document, *The Access Management Technical Design Manual*. These design standards and principals facilitate multimodal access to higher density land uses and *encourage*, rather than simply *accommodate*, pedestrian circulation along and across the AL4 highway. Highways to be classified as Access Level 4 include:

- Certain Expressways and Strategic Principal Arterial highways, if a by-pass has not been provided, in Centers;
- Regional Principal Arterials and Minor Arterials in Centers.

Slower motor vehicle speeds shall be provided on AL4 highways so that frequent public street intersections or motor vehicle entrances functioning like a public street can occur.

Development should be encouraged by land development ordinances of counties and municipalities to front buildings close to the AL4 roadway so as to minimize walking distances. Parking should not be encouraged in the front yard area.

Motor Vehicle Access

In centers, motor vehicle access is only permitted at public street intersections or at intersections of driveways to major developments that function like a public street by providing access to a variety of land uses and provide connections to adjoining properties.

Motor vehicle access designs should incorporate the use of shared access where public streets are not available. The Department will proactively seek and facilitate cross-access easements along AL4 highways. In Multimodal TIAs, the use of reasonable alternative access will be required for motor vehicle access if available. Interim direct motor vehicle access may be allowed in Multimodal TIAs pending the provision of reasonable alternative access and the direct motor vehicle access will be limited to right-turns.

Transit and Non-motorized Access

On AL4 roadways, multimodal access to higher density land uses shall be *encouraged*, rather than simply *accommodated*. For all new development fronting AL4 roadways, pedestrian walkways to transit stops shall be developed. Sidewalks shall be provided on all new development abutting AL4 highways to provide convenient pedestrian connections into property along the AL4 highway and to connect to adjacent property. AL4 highways shall provide ample, safe pedestrian crossing opportunities.

Bicycle use of AL4 highways shall be anticipated and they shall be designed to accommodate such use. New land development fronting AL4 highways shall accommodate the use of bicycles and if parking is provided for motor vehicles, parking for bicycles shall also be encouraged. County and municipal ordinances should require provision of bicycle parking facilities and regulate their design.

Crosswalks shall be provided at all intersections to continue the pedestrian facility across the intersection, whether the intersection is a public street or where it is a driveway functioning like a public street. Similarly, bicycle activity shall be anticipated at all intersections, and safe bicycle travel across any intersection must be provided.

Access Level 5

Access Level 5 applies to regional principal and minor arterial highways not located in Centers and major and minor collector roads in all TIAs.

Motor Vehicle Access

The use of reasonable alternative motor vehicle access may be required where available.

Where signalization is required, or where signalization is expected to be required in the future to accommodate development, motor vehicle left turns shall meet signal spacing and bandwidth requirements.

Where the roadway is divided and signalization is neither required nor anticipated to be required, motor vehicle left turns shall meet median opening (crossover) spacing requirements. Median openings for such developments shall be only directional median openings (U-turns and/or left-turns). Full directional median openings must meet signal spacing and bandwidth requirements. As a result, left-turns vehicular movements may or may not be permitted at the motor vehicle access point on AL5 highways.

Transit and Non-motorized Access

Bicycle traffic can be expected on AL5 highways. In centers and in Multimodal TIAs, the Department shall designate bicycle lanes where the volume and speed of traffic would justify separate lanes. In Management and Preservation TIAs, bicycle traffic may be able to comfortably share the road with motor vehicle if volumes and speeds are moderate.

In Multimodal TIAs and centers, motor vehicle entrances shall accommodate bicycle use as well. Safe travel into development must also be provided for bicycles. Motor vehicle entrances shall also accommodate pedestrian crossing movements. Development fronting AL5 highways in Multimodal TIAs and in centers shall provide sidewalks along their frontage and pedestrian connections to surrounding land uses as well as to transit stops. In Management TIAs, property fronting AL5 highways shall provide sidewalks as well and motor vehicle entrances shall also accommodate pedestrian crossing movements.

In Preservation TIAs, limited pedestrian activity is expected along these roads and property fronting such roadways shall not be required to provide sidewalks where pedestrian activity is unlikely. Where sidewalks are provided, motor vehicle entrances shall accommodate pedestrian crossing movements.

Access Level 6

This level applies to local roads, and frontage or service roads... Access to adjacent property is the primary function of AL6 roads. Access Level 6 is the default classification for all roadways not classified as Access Level 1 through Access Level 5. Residential subdivision streets are not classified by this Policy into any access level.

Motor Vehicle Access

Motor vehicle entrance spacing shall be determined by local land use ordinances and entrances shall have

acceptable intersection sight distance and appropriate geometric design for anticipated traffic. Motor vehicle turning movements are expected on AL6 roads.

Transit and Non-motorized Access

In Multimodal TIAs and in centers, developers shall provide pedestrian facilities along property fronting on AL6 roads. Pedestrian facilities may be required in Management TIAs and Preservation TIAs.

Convenient and direct pedestrian connections shall be required between AL 6 roadways and AL 4 or AL5 roadways in Multimodal TIAs and in centers.

CLASSIFICATION PROCESS

An Access Management Classification Team has been established by the Delaware Department of Transportation's Director of Planning. The Access Management Classification Team is responsible for assigning access level classifications to roadway segments and preparing a set of access management classification maps. The Access Management Classification Team includes the following representatives:

- 1) DelDOT:
 - a) Division of Planning,
 - b) Division of Preconstruction,
 - c) Bureau of Traffic Engineering,
 - d) DelDOT District Offices:
 - i) For segments within the North District, DelDOT North District Office,
 - ii) For segments within the Central District, DelDOT Central District Office,
 - iii) For segments within the South District, DelDOT South District Office,
 - 2) The Delaware Transit Corporation,
 - 3) The New Castle County Planning Department,
 - 4) The Kent County Planning Department,
 - 5) The Sussex County Planning Department,
 - 6) Municipal governments,
 - 7) County and/or municipal chambers of commerce,
 - 8) Citizen representative(s) from the counties,
 - 9) The Consulting Engineers Council,
 - 10) The Delaware Department of Natural Resources and Environmental Control,
 - 11) The Delaware Department of Agriculture,
 - 12) The Metropolitan Planning Organization depending on segment location; and,
 - 13) The Farm Bureau of each county.

DelDOT's Director of Planning, or his/her designee(s), shall serve as chairperson of the Classification Team.

The Access Management Classification Teams shall identify for each highway segment a recommended Access Level classification and shall illustrate these classifications in a set of access management classification maps.

The draft Access Level classifications shall be offered to the public and municipalities for review and comment. The Department will hold workshops to show and explain the access classifications and public hearing(s) to receive comments on the proposed final classifications. Following the workshops, the Secretary of Transportation will adopt the final access classifications.

4. INTERCHANGES AND INTERSECTIONS

LOCATION OF INTERCHANGES

The general criteria for grade-separated interchange warrants are contained in Chapter X of the AASHTO *Policy on Geometric Design of Highways and Streets, version 1994*, or superseding edition. These criteria are listed as the following six items: design designation, reduction of bottlenecks or spot congestion, improve safety, site topography, road-user benefits and traffic volume warrants. When any of these criteria for warrants are met, a grade-separated interchange should be *considered* for the design of an intersection, but simply meeting these warrants, in many cases is not full justification for a grade-separated interchange.

In addition to the above, a grade-separated interchange *may* be located along an arterial highway with an access level of 1 to 5 when at least one of the following conditions is met:

- (1) Where two divided multi-lane AL1-3 highways cross;
- (2) At a location where a signal would be considered and the resulting available green time would be less than 50 percent for AL2-3 highways or less than 40 percent for AL5 highways;
- (3) A new at-grade signalized intersection at the same location would not result in level of service "C" or better on the through-movement during any peak-period when the closest signalized approaches on the arterial highway on both sides of the location of such intersections are not already at level of service "D" or worse for the through-movement;
- (4) Where an existing at-grade signalized intersection at the proposed location operates at overall level of service "F" and there is no reasonable improvement that can be made to provide sufficient capacity; or
- (5) The minimum percentage band-widths would not be maintained.

Interchanges proposed to serve major traffic generators *may* be permitted only if, in addition to meeting one of the requirements set forth above, the following two conditions are met:

- (1) a regional public benefit to traffic movements is

demonstrated to the satisfaction of the Delaware Department of Transportation; and,

(2) the interchange also serves a public street that connects or will connect to the surrounding street or roadway network.

The distance between interchanges shall be measured from the interchanges' center points. On a state highway segment located in a center, Multimodal or Management TIA by this Policy, this distance shall be at least one mile from the closest interchange. On a state highway segment located in a Preservation TIA by this Policy, the distance shall be two miles from the closest interchange. An interchange shall be separated from a full movement intersection by at least the required traffic signal spacing distance.

An Interchange Management Plan is required for any new interchange or significant modification to an existing interchange. The interchange and the Interchange Management Plan must receive approval of the Chief Engineer. An Interchange Management Plan is a roadway and right-of-way concept plan for an existing interchange or future (to be built) interchange. Such a plan shall include schematics for the location of all future and current access locations, both public and private; anticipated traffic patterns; signal locations; signing and striping; the acquisition of access rights and any other controls that ensure the protection of the functional integrity of the interchange.

Nothing in this Access Policy shall be interpreted as requiring the Delaware Department of Transportation to authorize an interchange at any location.

Any time an interchange is authorized as part of an Application for Highway Entrance Permit, the intersecting street or motor vehicle entrance must provide convenient connection to the surrounding street or road system.

Interchanges on the Interstate Highway System are governed by federal regulation and must receive FHWA approval.

FUNCTIONAL AREAS OF INTERSECTIONS & INTERCHANGES

The spacing standards contained in this Policy prohibit motor vehicle entrances onto a highway within the functional area of an intersection. The Department shall not approve an Entrance Application or issue an Entrance Permit for a motor vehicle entrance or street within the functional area of another intersection to include street intersections, interchanges and motor vehicle entrances. The functional area of all intersections also includes bicycle and pedestrian facilities.

Motor vehicle entrances must be designed for the particular traffic characteristics anticipated. Upstream and downstream factors affecting motor vehicle entrance

location shall be considered. Further guidance on functional areas of intersections can be obtained from the *Access Management Technical Design Manual* and in the sections Location of Signalized Intersections and Location Of Unsignalized Motor Vehicle Access Points.

When the Department determines, based on traffic engineering principles, that the engineering or traffic information provided on an entrance application shows that the safety or operation of any motor vehicle entrance, at-grade street intersection or grade-separated interchange would be adversely affected, the application may be denied.

SIGHT DISTANCE

All at-grade intersections and entrances (motorized as well as non-motorized) onto state-maintained highways require sufficient sight distance to minimize hazards and disruptions to traffic flow for all users of the highway.

Establishing sufficient sight distance shall be an essential requirement for the approval of any entrance application. AASHTO has established appropriate sight distance requirements for at-grade intersections. These requirements apply to both street and entrance intersections. Applicants shall establish to the Department's satisfaction that suitable sight distances exist at all intersection locations based on the provisions contained in *A Policy on the Geometric Design of Highways and Streets, 1994 (AASHTO, pages 696-726)* and the standards contained in the *Access Management Technical Design Manual*.

There must be unobstructed sight distance in both directions on all approaches allowed at an intersection or entrance.

The sight triangles must be free of obstructions which might interfere with the motorist's or other highway user's ability to see other motor vehicles, pedestrians, and bicyclists approaching on the intersecting street or highway. Sight triangles are established by the space-time-velocity relationship at each intersection or entrance facility.

Placing any object within the sight triangle high enough above the elevation of the adjacent roadway to constitute a sight obstruction shall be prohibited. Violations shall be removed by the property owner or party responsible for placement. Additionally, the Department shall have full authority to remove same.

Sight triangle areas shall be designated on the record plans for all subdivisions and land developments approved and recorded by a county or municipality in Delaware. This area shall be designated as a sight triangle easement.

LOCATION OF SIGNALIZED INTERSECTIONS

Signals To Serve Public Purpose

To assure efficient traffic flow on two-way arterial streets and highways, new traffic signals shall only be located at intersections that meet optimal signal spacing

standards and permit two-way progressive traffic flow. Because such locations are inherently limited and thus constitute a scarce public resource, the Delaware Department of Transportation shall assure that all new signals are located and designed to serve broad transportation purposes. Signals that are designed to serve isolated or individual developments shall not be approved. Signals instead shall be located at intersections which provide linkages to the surrounding network of streets and highways. In most cases this shall require that the intersecting street must either be:

- a public street or road, or;
- a private entrance road or street for which a general easement has been created assuring that the public shall be able to use the street or entrance. Any such private entrance road or street shall function like a public street by providing access to surrounding properties, adjoining streets and roads and nearby developments.

Signal Spacing Standards

A new traffic signal may only be considered if there is a demonstrated need as determined by traffic signal warrants presented in Part 4C of the *Manual on Uniform Traffic Control Devices* (USDOT, FHA, 1988 edition or superseding edition). In addition, a signal shall be located at an optimal location where the progressive movement of traffic will not be impeded. Table 1 below sets forth optimal signal spacing distances based on operating speeds and cycle lengths.

Table 1 - Optimum Spacing of Signalized Intersections

Cycle Length (Seconds)	Operating Speed (mph)							
	20	25	30	35	40	45	50	55
Distances in Feet								
60	880	1,100	1,320	1,540	1,760	1,980	2,200	2,430
70	1,020	1,280	1,540	1,800	2,050	2,310	2,560	2,830
80	1,160	1,460	1,760	2,050	2,350	2,640	2,930	3,230
90	1,310	1,640	1,980	2,310	2,640	2,970	3,300	3,630
100	1,460	1,820	2,200	2,570	2,930	3,300	3,670	4,030
110	1,610	2,010	2,420	2,830	3,220	3,630	4,040	4,430
120	1,760	2,200	2,640	3,080	3,520	3,960	4,400	4,840
150	2,200	2,750	3,300	3,850	4,400	4,950	5,500	6,050

Source: Koepke, F.J. and Stover, V.G., *Access Management Guidelines for Activity Centers*. NCHRP Report 348, Transportation Research Board, National Research Council,

Washington, DC., 1992.

The spacing requirements outlined in Table 1 do not necessarily apply to pedestrian crossings where a median refuge is available.

A traffic signal shall be placed only at locations along state highways where all the conditions set forth in this section of the Policy are met. The location of traffic signals shall take precedence over the location of unsignalized access points if there is a conflict.

Where Optimal Signal Locations Have Been Identified

If the Department has designated optimal locations for future traffic signals along a highway segment within which a traffic signal is proposed, a traffic signal may be permitted at the designated optimal signal location if the applicant demonstrates that:

- (a) The traffic signal meets the criteria for warrants set forth in Part 4C of the “Manual on Uniform Traffic Control Devices for Streets and Highways”;
- (b) The intersecting street or motor vehicle entrance to be served by the traffic signal will also connect to the surrounding public street or road system and assure accessibility to adjoining and nearby properties.

A traffic signal may also be located at an alternative location located no further than 10% of the signal spacing distance from the optimal signal location provided that, in addition to paragraphs (a) and (b) above, the applicant demonstrates that:

- (c) the minimum bandwidth percentages for the highway are attained or exceeded as outlined in Table 2 – “Minimum Acceptable Through Bandwidths”.

Where Optimal Signal Locations Have Not Been Identified

If the Department has not designated optimal locations for traffic signals along a highway segment, a traffic signal may be permitted at a desired location only if the applicant demonstrates that:

- (a) The traffic signal meets the criteria for warrants set forth in Part 4C of the Manual on Uniform Traffic Control Devices
- (b) The intersecting street or motor vehicle entrance to be served by the traffic signal will also connect to the surrounding public street or road system and assure accessibility to adjoining and nearby properties.

(c) The applicant conducts a technical study to determine the optimal location for future traffic signals along the segment taking into account existing traffic signals and the location of existing unsignalized intersections of collector or arterial roadways, and either:

- (1) the traffic signal is proposed to be placed at an optimal location identified; or,
- (2) the applicant demonstrates that the minimum bandwidth standards have been met as outlined in Table 2 –

“Minimum Acceptable Through Bandwidths”.

Table 2 - Minimum Acceptable Through Bandwidths

Access Levels	Center/Multimodal TIA		Management TIA		Preservation TIA	
	Speed (mph)	Min. Band Width (%)	Speed (mph)	Min. Band Width (%)	Speed (mph)	Min. Band Width (%)
AL1	55-65	n/a	55-65	n/a	55-65	n/a
AL2	40-55	50 (at public streets only)	55	50 (at public streets only)	55	50 (at public streets only)
AL3	40-55	50	55	50	55	50
AL4	25-35	50 (at public streets only)				
AL5	25-45	40	35-55	40	35-55	40
AL6	25	Not specified	25-35	Not specified	25-35	Not specified

Delaware Department of Transportation, 1997.

Nothing in this Access Policy shall be interpreted as requiring the Department to authorize a traffic signal at any location. The Department may, pursuant to the criteria for warrants set forth in the most recent edition of the *Manual on Uniform Traffic Control Devices*, grant the access as proposed, require design or operational modifications as deemed necessary, restrict one or more turning movements, or deny the access.

APPROVAL OF TRAFFIC SIGNALS

The Bureau of Traffic may approve traffic signals during the application process. When a study is required by the Department for a potential traffic signal or modification of an existing traffic signal, the study shall be completed and sealed by a licensed Delaware professional engineer.

The *Access Management Technical Design Manual* contains the requirements for a traffic signal study. Along with those requirements, documentation must be provided to:

1. Demonstrate that the location of the proposed traffic signal is consistent with the traffic signal location standards and minimum acceptable bandwidths set forth in this Policy as contained in Tables 1 and 2;
2. Demonstrate that the approach roadway or entrance will provide convenient connections to the surrounding

street or roadway network, and that the public will have full access to the proposed approach roadways or entrance; and,

3. Demonstrate that the use of the green time accommodates pedestrian movement. If this can not be accomplished the signal shall be denied unless the applicant provides an alternative method to serve pedestrian crossing requirements.

The need for installation of new traffic control signals or the modification of existing traffic control signals will be determined by the Department in accordance with this Policy, the *Access Management Technical Design Manual* and the warrants prescribed by the most recent edition of the *Manual on Uniform Traffic Control Devices*.

All costs, basic or incidental, to complete the traffic signal study, and for the construction, operation, or maintenance of the signal will be borne by the applicant. Furthermore, the cost of modifications to the traffic signal system that may be required prior to the expected build-out date of the development will be paid for by the applicant.

When the Department determines that a traffic signal may be required in the future, the applicant will be required to enter into a signal agreement with the Department prior to obtaining a Permit for Entrance Construction. The agreement will be recorded in the appropriate County Recorder of Deeds Office.

Location Of Unsignalized Motor Vehicle Access Points

The location of unsignalized motor vehicle access points shall be established using the motor vehicle entrance spacing standards contained in Table 4, the standards and regulations in the *Access Management Technical Design Manual* and safety considerations based on sight distance and other geometric requirements found in the Delaware Department of Transportation’s *Road Design Manual*.

The entrance spacing standards in Table 4 are based on “spillback”. Each motor vehicle entrance has an influence area and “spillback” occurs when an upstream driveway is located within the influence area of an adjacent driveway. A further discussion of the standards in Table 4 and “spillback” can be found in the section, Conformance Of Lots Having Direct Motor Vehicle Entrances.

Unsignalized motor vehicle access points, whether on conforming or non-conforming lots, shall be subject to the following:

- (1) Unsignalized motor vehicle access points on divided highways for major traffic generators involving left-turn ingress and egress shall be located at existing median breaks and where the motor vehicle access points would conform to the traffic signal spacing requirements set forth in this Policy.
- (2) If future traffic volumes could warrant the installation of a traffic signal and signalized spacing

requirements can not be met, as a condition of the Entrance Permit, the Chief Engineer may, at such time when future traffic volumes are reached, close the left-turn motor vehicle access.

(3) If an undivided highway becomes divided, as a condition of the Entrance Permit, the Chief Engineer may at such time close the left-turn motor vehicle access.

(4) For motor vehicle access points on a divided highway, the following apply:

(a) The spacing of right-turn motor vehicle access on each side of the highway may be treated separately.

(b) Where left-turns at median breaks are involved, the motor vehicle access shall line up or be offset from the median break by at least the minimum spacing distance or 300 feet whichever is greater.

(c) Left-turns by motor vehicles shall be prohibited if a median is already established and any

proposed opening of the median:

1.) does not provide the general public any significant benefit to highway traffic operations and safety, as determined by the Department, whether or not the proposed median opening meets the crossover spacing standards of this Policy, or,

2.) would be counter to the purpose of the median construction, as determined by the Chief Engineer, regardless of whether the proposed median opening meets the crossover spacing standards in this Policy.

(5) On Access Level 5 highways and any undivided highway, motor vehicle access on both sides of the highway shall either be aligned, or the centerline of the access points shall be offset at least 200 feet for Commercial Entrances with less than 1000ADT and 400 feet for two Commercial Entrances with ADT greater than 1000. (see section, "Categories of Applications and Permits".

Table 4 - Motor Vehicle Entrance Spacing Distances

Access Level 3 – Spillback Rate 5% Minimum Entrance Spacing=20/mile=250'											
Right Turn In Volume (vph)	Speed Change in Thru Lane (mph)	35 mph		40mph		45mph		50mph		55mph	
		FS	NS	FS	NS	FS	NS	FS	NS	FS	NS
R<30*	10	250	275	250	300	275	350	315	375	375	425
30<R<60	5	250	350	275	400	315	450	375	500	435	575
60<R<90	0	275	375	315	425	375	500	435	575	480	675
>90	0	275	425	315	475	375	550	435	625	480	750
Access Level 4 – Spillback Rate 10% Minimum Entrance Spacing=30/mile=175'											
Right Turn In Volume (vph)	Speed Change in Thru Lane (mph)	35mph		40mph**		45mph**		50mph**		55mph**	
		FS	NS	FS	NS	FS	NS	FS	NS	FS	NS
R<30*	15	175	225	200	250	235	275	275	275	315	315
30<R<60	10	200	300	235	350	275	375	315	425	375	475
60<R<90	5	235	350	275	375	315	425	375	500	435	550
>90	0	275	375	315	425	375	475	435	550	480	650
Access Level 5 – Spillback Rate 25% Minimum Entrance Spacing=40/mile=125'											
Right Turn In Volume (vph)	Speed Change in Thru Lane (mph)	35mph		40mph		45mph		50mph		55mph	
		FS	NS	FS	NS	FS	NS	FS	NS	FS	NS
R<30*	Full	125	125	125	125	125	125	125	125	n/a	n/a
30<R<60	15	125	250	200	275	235	300	275	300	n/a	n/a
60<R<90	10	200	275	235	300	275	325	315	375	n/a	n/a
>90	5	235	325	275	350	315	400	375	450	n/a	n/a

Notes: for Table 4

FS = Full shoulder or deceleration lane length required

NS = No shoulder or less than full shoulder (10')

* = Not required for total trips less than 10ADT

** = Speeds generally not applicable to AL4

Use minimum entrance spacing standards for posted speed limits of 30mph or below

Values that are given in the shaded areas are to be used only if a full length deceleration lane cannot be constructed

(6) No motor vehicle access shall be located along a striped right or left-turn lane or taper. If this results in a landlocked parcel, the standards and procedures governing non-conforming lots apply. When right or left-turn lanes are present or will be needed in the future, motor vehicle entrances must be separated by a distance sufficient so that the lanes do not overlap or the equivalent distance.

(7) A left-turn lane shall be provided for motor vehicle access on state highway segments with Access Level of 5 when the criteria set forth in the *Access Management Technical Design Manual* are met. Left-turn access by motor vehicles shall be prohibited if the criteria have been met but there is insufficient space for a left-turn lane, unless the Subdivision Engineer determines that left-turns can be made safely considering sight distance, volumes, and the impact on other users of the highway right-of-way.

(8) Acceleration and deceleration lanes shall be provided when warranted in accordance with the *Access Management Technical Design Manual* and the Delaware Department of Transportation *Road Design Manual* for all state highways except AL 1 and AL2 highways where no direct motor vehicle access to property is allowed. Notwithstanding meeting the warrants for acceleration and deceleration lanes, acceleration and/or deceleration lanes may be required, as determined by the Subdivision Engineer, based on site-specific safety considerations, public safety considerations or traffic operations along a highway.

(9) Motor vehicle entrances shall be designed to enable motor vehicles to leave the highway without restriction or queuing on the highway. Motor vehicle access shall not be provided for parking areas that require backing maneuvers within the highway right-of-way with the exception of AL6 roads. This does not apply to on-street parking.

(10) On all highways classified as Access Levels 2 through 5, a street proposed to extend to the highway may only intersect the highway if it does not create non-conforming lots on either side of the intersection or if the non-conforming lots created would have no direct access to the Access Level 2 through 5 highway.

MEDIAN OPENING/CROSSOVER POLICY

Raised or other non-traversable medians shall not be opened where a design report or other study has determined the need for the median unless a traffic and safety report is

completed to the satisfaction of the Chief Engineer and the Chief Engineer or his/her designee issues a written determination why the median opening is acceptable.

Crossover spacing requirements are set forth below and are applicable only where signalization is neither required nor anticipated in the future. Crossover spacing requirements are only applicable for directional median openings (U-turns and/or left-turns only). A full directional median opening must meet signal spacing requirements. At motor vehicle entrances, where signalization is required or is anticipated to be required, signal spacing standards take precedence.

Table 3 - Unsignalized Median Opening (Crossover) Spacing (ft)

Area Type	Access Level		
	3	4 or 5	6
Center	*	500	Medians on AL6 roads serve a traffic calming function. No minimum spacing required.

Multimodal TIA	*	1,000	
Management TIA	*	1,000	
Preservation TIA	*	2,000	

Delaware Department of Transportation, 1997

*Median openings on AL3 highways permitted only at locations meeting signal spacing distance requirements but where traffic signals are not currently warranted. Median openings for U-turns may be permitted adjacent to signalized intersections as part of the signalized intersection design.

Crossovers shall be prohibited if a median is already established and the proposed opening of the median:

- 1) does not provide the general public any significant benefit to traffic operations and safety, as determined by the Chief Engineer, whether or not the proposed median opening meets the crossover spacing standards of this Policy, or,
- 2) would be counter to the purpose of the median construction, as determined by the Chief Engineer, regardless of whether or not the proposed median opening meets the crossover spacing standards in this Policy.

CONFORMANCE OF LOTS HAVING DIRECT MOTOR VEHICLE ENTRANCES

Lots having motor vehicle entrances intersecting with a state highway shall conform with the spacing standards

established in this section and listed in Table 4, "Motor Vehicle Entrance Spacing Distances" and the standards and regulations contained in the *Access Management Technical Design Manual*.

The entrance spacing standards in Table 4 are based on "spillback". Each motor vehicle entrance has an influence area and "spillback" occurs when an upstream driveway is located within the influence area of an adjacent driveway. The "spillback" rate assigned to each access level will be

reviewed annually by the Department (see section, "Changes in Classification and Spillback Rates").

Access Level 1

Access Level 1 highways have been designated controlled-access facilities by the Delaware Department of Transportation and all direct private access is denied.

Access Level 2

All lots fronting state highway segments designated Access Level 2 shall be considered non-conforming when access rights have not been acquired. The requirements for non-conforming lots are described in the section, "Non-Conforming Land Parcels".

Access Levels 3, 4 and 5

The conformance of lots on streets and highways which have been classified for access management purposes as Access Level 3, 4, and 5 shall be determined using the following entrance spacing distances contained in Table 4. Field entrances for farm vehicles (see Agriculture Entrance Permits) are not required by this Policy to meet the spacing standards outlined below.

Access Level 6

Any lot on a state highway segment designated Access Level 6 shall be a conforming lot. There are no minimum motor vehicle entrance spacing distances described in this Policy as motor vehicle entrance spacing on AL6 roads is determined by local land use ordinances.

Partial denial of access lots

A lot which has had some portion of its state highway frontage acquired by the Department shall not utilize any of the frontage along which access is denied for purpose of calculating acceptable spacing distance.

Mid-Block Parcels

In an effort not to penalize a property owner because of the actual location of an adjoining entrance, the Department will evaluate entrance spacing based on ideal spacing. Ideal spacing assumes the adjoining entrance would be located at the centerline of the adjoining parcel. Therefore, the

procedure the Department will use in the review of an Application for Highway Entrance Permit to determine whether or not a lot conforms to this Policy will be as follows:

- (1) Determine the access level of the fronting highway
- (2) Determine the posted speed of the fronting roadway
- (3) Determine S (ideal) where:

$$S(\text{ideal}) = (.5F_a + F_b + .5F_c)/2 \text{ and,}$$

S(ideal) = the idealized entrance spacing measured from the midpoint of the frontage of the adjoining parcels;

F_a = Frontage of Parcel A, one of the adjoining

parcels;

F_b = Frontage of the applicant's parcel as described in the Application for Highway Entrance Permit; and,

F_c = Frontage of Parcel C, the other adjoining

parcel.

(4) If S(ideal) is greater than the minimum spacing as identified in Table 4, then the lot as described in the Application for Highway Entrance Permit is conforming.

(5) If S(ideal) is less than the minimum spacing as identified in Table 4, then the lot as described in the Application for Highway Entrance Permit is non-conforming and the procedures below govern non-conforming parcels.

Corner Parcels (Corner Clearance)

The location of entrances for corner properties shall be considered as follows (in order of importance):

- (1) On the departure leg of the intersection;
- (2) Outside of the deceleration lane (if on the approach leg)
- (3) On the minor street (street with lower access classification)
- (4) At the furthest distance away from the intersection, using the minimum corner clearance distances, as outlined below.

(5) Minimum corner clearance – The minimum distance from the intersection, as measured from the end of the radius, shall be as follows:

AL6 – No minimum standard, only use location criteria outlined above in (1) through (4);

AL5 – Minimum distance of 125';

AL4 – Minimum distance of 175'; and,

AL3 – Minimum distance of 250'.

If available spacing is less than the minimum distances as outlined above for AL3-AL5, then the parcel, as described in the Application for Highway Entrance Permit, is non-conforming, and the procedures below govern non-conforming parcels.

NON-CONFORMING LAND PARCELS

Mid-Block Parcels

Non-conforming lots are all lots that do not meet the

motor vehicle entrance spacing requirements as outlined above in Table 4, "Motor Vehicle Entrance Spacing Distances" using the methodology above. Non-conforming lots will only be permitted to generate the right turn in volume associated with the minimum spacing standard that is met by the calculated $S(\text{ideal})$.

All lots having direct motor vehicle access to Access Level 2 highways are considered non-conforming according to this Policy.

Developments on lots that are non-conforming and have no reasonable alternative access available shall have motor vehicle use limitations included as a condition of any approved Application for Highway Entrance Permit, Permit for Entrance Construction and the Entrance Permit. Limitations on motor vehicle use will be calculated using the equations contained in the above section. The limitations shall apply to the highest hourly right turn in volume on a weekday, Saturday or Sunday as calculated using trip generation formulas published by the Institute of Transportation Engineers in *Trip Generation*.

Corner Parcels

Non-conforming corner parcels are parcels that can not meet the minimum corner clearance distances. If non-conforming, the formula below shall be used to determine the highest hourly right turn in volume on a weekday, Saturday or Sunday as calculated using trip generation formulas published by the Institute of Transportation Engineers in *Trip Generation*:

$$S(\text{ideal}) = (F_b + F_c)/2$$

Non-conforming lots will only be permitted to generate the right turn in volume associated with the minimum spacing standard that is met by the calculated $S(\text{ideal})$ based on Table 4.

All corner lots having direct motor vehicle access to Access Level 2 highways are considered non-conforming according to this Policy.

Developments on corner lots that are non-conforming and have no reasonable alternative access available shall have motor vehicle use limitations included as a condition of any approved Application for Highway Entrance Permit, Permit for Entrance Construction and the Entrance Permit. Limitations on motor vehicle use will be calculated using the equation above. The limitations shall apply to the highest hourly right turn in volume on a weekday, Saturday or Sunday as calculated using trip generation formulas published by the Institute of Transportation Engineers in *Trip Generation*.

All Non-Conforming Parcels

As of the effective date of this Policy, the Subdivision Engineer shall impose the maximum hourly right turn in

limitation, calculated as above, as a condition of the Letter of No Objection for non-conforming parcels and these limitations will be specified in the Permit for Entrance Construction and in the Entrance Permit for each non-conforming lot.

NUMBER OF MOTOR VEHICLE ACCESS POINTS

Only one motor vehicle access point shall be permitted to a non-conforming lot with the exception of agricultural field entrances.

For conforming lots, the number of motor vehicle access points will be the minimum number to provide reasonable access as approved by the Department, using the criteria outlined below.

On divided highways, two one-way access points may be substituted for each two-way access point.

(1) One two-way motor vehicle access point shall be allowed for a Commercial Entrance Permit when ADT is expected to be 1000ADT or less, even if conditions set forth in (4), (5) or (6) below are met.

(2) Two two-way motor vehicle access points *may* be allowed for a Commercial Entrance Permit when ADT is expected to be greater than 1000ADT but *only* if the second motor vehicle access point significantly benefits the safety and efficiency of the highway as demonstrated by the applicant and found acceptable to the Department.

(3) Three two-way motor vehicle access points *may* be allowed for a Commercial Entrance Permit, where the expected peak hour volume is 200 or more motor vehicle trips and ADT is greater than 1000ADT, but *only* if the second and third motor vehicle access points will *each* significantly benefit the safety and efficiency of the highway as demonstrated by the applicant and found acceptable by the Department *and* meet the requirements in (4), (5) or (6) below.

(4) Two two-way motor vehicle access points may be allowed on a mid-block lot which has a minimum of three times the motor vehicle entrance spacing distance.

(5) Three two-way motor vehicle access points may be allowed on a midblock lot which has a minimum of four times the motor vehicle entrance spacing distance.

(6) A maximum of two two-way motor vehicle access points may be allowed on a corner lot which has at least 3 times the motor vehicle entrance spacing distance and when alternative motor vehicle access is provided via the adjacent lower classified street or highway.

For all additional motor vehicle access points beyond one motor vehicle entrance, the Department must be satisfied that the applicant has demonstrated that:

1. The additional motor vehicle access point(s) significantly benefit the safety and efficiency of the highway; and,

2. Does not negatively affect bicycle and pedestrian traffic.

The Department will only approve additional access points when both (1) and (2) are established.

ALTERNATIVE ACCESS

Unless otherwise determined solely by the Department, when a property has reasonable alternative motor vehicle access to a lower access level roadway or the opportunity to obtain reasonable alternative motor vehicle access such as through shared motor vehicle access, direct private motor vehicle access shall not be permitted on the higher access level highway. All direct private motor vehicle access is prohibited on Access Level 1 and Access Level 2 highways where access rights have been acquired.

The use of reasonable alternative access applies to:

- AL2 roadways where access rights have not been acquired;
- AL3 roadways;
- AL4 roadways; and,
- AL5 roadways.

Direct motor vehicle access to private property will ordinarily not be approved by the Department where reasonable alternative motor vehicle access exists or the opportunity for reasonable alternative motor vehicle access exists.

When direct motor vehicle access is allowed such motor vehicle access shall continue only until such time that other reasonable alternative motor vehicle access to a lower classified roadway is available and the direct motor vehicle access may then be closed. Any direct motor vehicle access allowed on the above highways may be restricted in terms of the turning movements allowed by this Policy. The Department's policy on the use of reasonable alternative motor vehicle access does not apply to agricultural field entrances.

REVOCAION OF ENTRANCE PERMIT WHEN ALTERNATIVE MOTOR VEHICLE ACCESS IS AVAILABLE

To address changing conditions, the Department may revoke or change the conditions of any Entrance Permit, including a grandfathered permit, for a motor vehicle entrance located on a state highway having an Access Level of 1 through 5 if the Chief Engineer determines that reasonable alternative motor vehicle access is available for the lot served by the permit and that the elimination of direct access to the higher classified state highway will benefit the safety and efficiency of the higher classified state highway.

The permit will not be revoked until the reasonable alternative motor vehicle access is completed and available for use. Prior to revocation, the Department shall:

(1) determine that the lot has reasonable motor vehicle access to a lower classified street or highway, and that:

a) a lot zoned or used for commercial type purposes (including offices), has access onto any paved parallel or perpendicular street, highway, easement, service road, frontage road, or shared motor vehicle entrance, which is of sufficient design to support commercial traffic to the site, and is situated so that motorists will have a convenient, direct means of reaching the site and returning to the highway and would not unduly affect a residential area. Commercial purposes include appropriate uses as determined by the county or municipal zoning ordinance.

b) a lot zoned or used for industrial purposes or warehouse purposes, has access onto any paved public street, highway, service road, frontage road, access road, or easement across an industrial access road, which is of sufficient design to support necessary truck and employee access as required by the industry and would not unduly affect a residential area. Industrial purposes or warehouse purposes include appropriate uses as determined by the county or municipal zoning ordinance.

c) a lot zoned or used for residential purposes has access to any paved public street or highway, either directly or by easement.

d) a lot zoned or used for agricultural purposes has access to any public street or highway, either directly or by easement.

(2) provide to the lot owner:

a) ninety days written notice of the owner's right to request a hearing;

b) a plan depicting reasonable alternative motor vehicle access and signing; and,

c) a plan depicting the improvements the Department will make to provide the alternative motor vehicle access. Such improvements, as determined by the Department on a case-by-case basis, *may* include the removal of barriers to turning movements on the lower access level roadway.

(3) provide all necessary assistance in the establishment of the reasonable alternative motor vehicle access. Such assistance will, if necessary include, but not be limited to, payment of the costs and expenses associated with:

a) removal of existing motor vehicle entrance(s);

b) construction of alternative motor vehicle entrance(s) and any other required access facilities for bicyclists, pedestrians and transit patrons;

c) engineering design;

d) on-site circulation improvements to accommodate the changes in access;

e) landscaping to replace that disturbed by changes in access;

f) replacement of directional and identifying signs;

g) acquisition of lands or rights or interest in lands, by purchase or condemnation, to accommodate the

changes in access; and/or,

h) acquisition of any other right, by purchase or condemnation, required to accommodate the changes in access.

(4) provide the necessary roadway pavement structure and width for traffic using the reasonable alternative motor vehicle access, which otherwise would not have used the roadway, in lieu of the higher classified state highway access. If the alternative access is to a municipally maintained street, the Department shall not have the responsibility to maintain these roads.

The Department may also require either direct or indirect alternative access to a lower classified state highway in addition to direct state highway access to a higher classified highway if the Subdivision Engineer determines the alternative access will benefit the safety and efficiency of the higher access classified highway.

Nothing set forth above shall be interpreted as requiring the Department at its own expense to signalize, construct or improve non-motor vehicle access or motor vehicle entrances or make other improvements related thereto.

1. The Department may build new roads or acquire access easements, by purchase or condemnation, to provide alternative motor vehicle access and non-motor vehicle access to existing developed lots, and,

2. The Department may acquire, by purchase or condemnation, any right of access to any state highway upon a determination that the public health, safety and welfare require it.

PEDESTRIAN CROSSINGS

Pedestrian and bicycle movements shall be accommodated at intersections and at other locations. Specific guidance on the design of pedestrian and bicycle crossing facilities can be found in the *Access Management Technical Design Manual*.

Crosswalks at Motor Vehicle Intersections

Most pedestrian crossings will occur at intersections that also serve motor vehicles. Crosswalks should be marked at all intersections where there is substantial conflict between motor vehicles and pedestrians. Permissive and mandatory warrants for the installation of pedestrian signal indicators at signalized intersections are established in the *MUTCD* (Subchapter 4D). Crosswalk markings at signalized intersections, at motor vehicle entrances, across intersection approaches controlled by stop signs, and at other locations serve primarily to guide pedestrians in the proper path. The *Access Management Technical Design Manual* provides guidelines for development site layout and appropriate crosswalk locations.

Other Crosswalk Locations

Crosswalks across roadways where traffic is not

controlled by traffic signals or STOP signs serve to warn motorists of a pedestrian crossing point. At non-intersection locations, these markings legally establish the crosswalk. Provision of mid-block pedestrian crosswalks should be provided at appropriate locations of pedestrian concentrations or where pedestrians would otherwise not recognize the proper place to cross and only where sufficient sight distance exists.

In centers and in Multimodal TIAs, crosswalks, or other pedestrian crossing opportunities, should be provided at frequent locations, as needed, on Access Level 4 and 5 roadways to maintain pedestrian travel options.

An engineering study should be required before a crosswalk is installed at a location away from a traffic signal or STOP sign. At locations where engineering judgment determines that pedestrian crossing demand will not be concentrated, and that there is no need to assist pedestrians in recognizing the proper place to cross, a crosswalk generally should not be installed. However, the absence of a pedestrian crosswalk does not mean that pedestrian crossings are prohibited. At pedestrian crossing locations where only low volumes of pedestrians are anticipated, physical facilities should still be provided to assist pedestrian mobility, including curb cuts, lighting and, where appropriate and feasible, pedestrian refuges. Specific guidelines on the requirements for mid-block crosswalks and pedestrian refuges are contained in the *Access Management Technical Design Manual*.

Pedestrian Signalization Warrants

A traffic signal may be warranted at locations where the pedestrian volume crossing the major street at an intersection or mid-block location is especially high. Warrants and installation requirements for pedestrian signalization are provided in Section 4C-5 of the *MUTCD*.

Grade-Separated Pedestrian Facilities

In centers and Multimodal TIAs, pedestrian overpasses and underpasses may provide an appropriate method of facilitating pedestrian and bicycle crossings of Access Level 1, 2 and 3 highways.

Grade-separated facilities are generally not needed unless the average daily traffic on the arterial highway exceeds 35,000 vehicles per day and pedestrian volumes exceed 100 crossings per hour over a four hour period. (FHWA Report #RD-84/082, July 1984).

Further guidance on the requirements for grade-separated pedestrian structures can be found in the *Access Management Technical Design Manual*.

Bicycle Use of Pedestrian Crossings

Bicycles operate as vehicles when traveling in the roadway. As a result, bicyclists should not be expected to use most crosswalks. However, at mid-block crossings

connecting streets or multi-use trails, bicycle use of crosswalks will occur and should be anticipated. In addition, novice bicyclists will frequently choose to dismount and walk their bicycles across heavily traveled arterial highways or intersections with high volumes of turning traffic. As a result pedestrian facilities, especially refuge island openings, should be constructed with sufficient width to accommodate walking bicyclists. Further guidance on bicycle use of pedestrian crossings can be found in the *Access Management Technical Design Manual*.

Bicyclists may also use grade-separated pedestrian crossings, especially those that are made accessible through the provision of ramps. As a result, ramps and overpasses should be constructed with sufficient width to accommodate shared bicycle and pedestrian use. Overpasses or underpasses servicing multi-use trails should be designed to accommodate projected demand by both bicyclists and pedestrians. Further guidance can be found in the *Access Management Technical Design Manual*.

5. DEVELOPMENT APPROVALS

PRE-APPLICATION MEETING

Applicants seeking land development approval or seeking rezoning approval are encouraged to have a preliminary meeting with the Department before filing with the local or county government. The purpose of such a meeting shall be to review the preliminary plans of an applicant and to allow reaction and recommendation from the Department prior to formal application to the land use agency. Applicants should provide any preliminary maps, plans, and documents to illustrate the site, ownership, size and type of land use, traffic volumes and vehicle types generated, adjacent roadways, existing and available motor vehicle entrance points, and other adjacent accesses. At the meeting, participants will discuss the Access Management Policy, the requirements of the *Access Management Technical Design Manual*, site specific conditions, options for motor vehicle entrance location and design, requirements for non-motorized access and the submittal requirements for an Application for a Highway Entrance Permit. These preliminary meetings, comments and recommendations shall in no way bind the Department or the applicant in future decisions on a formal Application for Highway Entrance Permit submittal.

INCORPORATED AREAS OF DELAWARE

Applicants seeking land development approval or rezoning approval that requires an entrance onto a state-maintained roadway within a municipality in Delaware are urged to review this Policy and the *Access Management Technical Design Manual* to ensure that access provisions meet the requirements of the Department. Unlike the process currently undertaken with the three counties in

Delaware to conduct coordinated land development review in unincorporated areas of the state, Memorandums of Understandings to perform coordinated land development review processes are not in place between the Department and municipalities in Delaware. Thus, it is highly recommended that an applicant's initial plans be reviewed with the Department before finalizing the development plans and making application to local authorities for a building permit. The Department is not required to issue Entrance Permits or approve any entrance plan that has been specified in a development approval process separate from the official entrance approval and entrance permitting process described in this Policy and the *Access Management Technical Design Manual*. Consequently, early coordination may minimize conflicts at entrance application time.

SUBDIVISION OF LAND

In support of this Policy, counties and municipalities should avoid approving subdivisions of land that would create additional lots abutting a highway with an access level of 5 or higher, unless all the abutting lots created are conforming under this Policy or the lots are restricted from access to the highway segment with an access level of 5 or higher. Direct access from subdivided lots created after the effective date of this Policy to a highway shall only be permitted by the Department if the lot meets the requirements of conforming lots under this Access Policy. Non-conforming lots in existence as of the effective date of this Policy shall not be subdivided in a manner that would make them less conforming. However, non-conforming lots on highways classified as access level 2, 3, 4 or 5 may be subdivided to create new street intersections if these newly created streets provide connections to the surrounding street network. These non-conforming lots shall not have direct motor vehicle access to the access level 2, 3, 4 or 5 highway.

DEDICATION OF RIGHT OF WAY

The subdivision of land adjacent to a state maintained highway is subject to a dedication of right-of-way sufficient to provide a total highway right-of-way in accordance with the minimum standards as contained in the *Access Management Technical Design Manual*.

The Department shall provide recommendations to counties and municipalities during their subdivision approval process regarding right-of-way requirements. These approved right-of-way requirements shall be described on the record plan for all subdivisions and land development plans.

Right-of-way requirements for subdivision streets serving as the internal street system for either a residential community, mixed use community, office park, or an industrial park are outlined in the Department's *Access Management Technical Design Manual*.

Minimum right-of-way standards may be supplemented

with specific corridor standards prepared as part of a proposed highway improvement. Where the Department has established future rights-of-way lines, the portion adjacent to proposed subdivision shall be recommended for dedication to public use.

APPLICATIONS FOR REZONING

Any request to have land within an unincorporated area of a county rezoned shall be reviewed by the Department to determine what types of transportation improvements should be required to assure that appropriate transportation resources will be available to support the proposed use.

If an applicant did not previously request and attend a preliminary meeting with the Department, at the time of the filing of a request for rezoning, the applicant should meet with staff from the Department and the governing body having jurisdiction in order to review the possible land uses and to discuss proposed transportation improvements.

For rezoning applications, the Department will issue a letter report that:

- indicates the access level assigned to the highway on which the lot(s) has frontage,
- provides a general description of the access allowable and desirable under this Access Policy, and,
- determines if the lot is conforming or, if not, what motor vehicle use limitation would apply.

The letter report is non-binding on subsequent application and permit decisions on the part of the Department, because no access plan is submitted to the Department at this stage. The letter report will be transmitted to the county, along with a copy of the report for the applicant and an entrance application package.

The letter report shall also contain recommendations regarding appropriate transportation investments and services which should be incorporated into the design of any proposed development built in accordance with the proposed zoning. It shall also list recommendations regarding how permitted land uses should be arranged on the site in order to facilitate mobility and access by all modes.

Counties are encouraged not to grant a rezoning or zoning variance for a non-conforming lot abutting a state-maintained highway when the traffic volume from the use would not be in conformance with this Access Policy. The Department will not issue permits for non-conforming lots where the motor vehicle traffic volumes to be generated by the proposed use are expected to exceed the motor vehicle trip limitations established by this Access Policy for non-conforming lots.

APPLICATIONS FOR SUBDIVISION OR SITE PLAN APPROVAL

The Department shall review all applications for development approval in unincorporated areas in accordance with the agreements between the counties and the Department that govern this review in order to:

- assure that appropriate access is being provided to the proposed development,
- ensure that the provisions of the Access Management Policy are being adhered to, and,
- ensure that the design standards and regulations of the Department are being implemented.

Counties should not grant land development approval for a non-conforming lot abutting a highway where the traffic volume from the proposed use would not be in conformance with the traffic volume allowed pursuant to this Access Policy. The Department will not issue permits for non-conforming lots where the motor vehicle traffic volumes to be generated by the proposed use are expected to exceed the motor vehicle trip limitations established by this Access Policy for non-conforming lots. The Department shall issue a Letter of No Objection to the county for subdivisions and site plans that are found by the Department to conform to this Access Policy and the *Access Management Technical Design Manual*. A copy of the Letter of No Objection will be provided to the applicant. The county should not record the Record Plan until they have received a Letter of No Objection from the Department.

TRANSPORTATION ACCESS BY NON-AUTOMOBILE TRAVEL MODES

Where a land development proposal is being planned in accordance with the Comprehensive Plan for a County to be of sufficient density to support public transportation and other non-automobile travel modes, the Department will review the proposal to assure that adequate provisions are made to enhance travel by all modes including public transportation, bicycles and walking.

Process

Applicants seeking a rezoning or land development approval should be asked by the county or municipality to identify the role different travel modes can play in serving the access needs of the proposed new permitted uses. Any rezoning or land development approval by a county or municipality should incorporate conditions requiring the provision of improvements needed to serve non-automobile access to the site, and any operating or financial obligations that may be required to reduce single-occupant automobile trips to the site such as travel demand management measures like compressed work weeks, transit user incentives or subsidies for bicycle maintenance expenses, among others.

Design Standards

Detailed design standards and regulations are contained in the following documents:

1. The Department's *Access Management Technical Design Manual*, which contains guidelines on the design and provision of bicycle, pedestrian and transit access as well as motor vehicle access; and,

2. The Department's *Road Design Manual*.

Questions regarding appropriate design approaches for public transit can be reviewed with the Delaware Transit Corporation's Service Development Department.

Questions regarding appropriate design approaches for bicycle and pedestrian access can be reviewed with the Department's Bicycle and Pedestrian Coordinator.

If not previously required by County or Municipal land development ordinances, residential subdivisions and applicants for Commercial Development Entrance Permits, where ADT is expected to exceed 1000ADT, will provide a pedestrian circulation plan, as part of the Department's entrance application process, to document how pedestrians can safely circulate through the development. Specific guidance on the provision of and requirements for pedestrian facilities can be found in the *Access Management Technical Design Manual* and the Department's *Road Design Manual*.

Land Development Reviews

Where a land development proposal is being planned in accordance with the Comprehensive Plan for a County to be of sufficient density to support public transportation and other non-automobile travel modes, applicants will be asked to demonstrate to the Department that the following access needs of non-automobile users have been anticipated:

1) Developments having a high trip generation or trip attraction potential should be located adjacent to or in proximity to an Access Level 4 roadway.

2) Minimum setbacks should be provided between AL4 roadways and building(s) fronting on such roadways, and no or minimal parking shall be provided in the front yard area.

3) Pedestrian facilities, accessible to the disabled, shall be provided between a designated transit stop and the building entrance(s) for all development located within a ¼ mile radius of a transit stop.

4) Weather protected shelter at designated transit stops should be provided for transit passengers. This may consist of a bus shelter, but may also consist of a building alcove or other shelter area with appropriate visibility and seating.

5) Services for transit users should be provided, as appropriate, including telephones, seating areas, lighting, and newspaper machines. In major retail or office developments, convenience retail establishments should be located in close proximity to bus stops to permit transit users to link trips. Examples include newspaper stands, delis, coffee and donut shops, florists, etc.

6) Residential developments should provide for convenient pedestrian access to transit stops through the design of the subdivision street network and the provision of sidewalks and through the construction of augmented multi-use linkage paths as needed.

6. PERMITS AND APPLICATIONS

ISSUANCE BY MUNICIPALITIES & COUNTIES

The Delaware Department of Transportation has the sole authority to accept Applications for Highway Entrance Permits (entrance applications) and to issue Permits for Entrance Construction and to issue Agriculture/Utility Entrance Permits, Single Family Entrance Permits, Commercial Development Entrance Permits for each entrance requiring access to a state-maintained highway.

Notwithstanding the above, Permits for Entrance Construction for Agriculture/Utility Entrances or Single Family Entrances or Minor Development Entrances, Single Family Entrance Permits and Commercial Development Entrance Permits (where ADT is expected to be less than 1000ADT) may be issued by an incorporated municipality or county in Delaware, if all of the following conditions are present:

(1) The municipality or county has entered into an agreement with the Delaware Department of Transportation to issue Permits for Entrance Construction, Agriculture/Utility Entrance Permits, Single Family Entrance Permits and Commercial Entrance Permits. The agreement will bind the municipality or county to use this Policy, the *Access Management Technical Design Manual* and any other applicable state law for the issuance of Permits for Entrance Construction for the construction of Agriculture/Utility entrances, Single Family entrances or Commercial Development Entrances, Agriculture/Utility Entrance Permits, Single Family Entrance Permits and Commercial Development Entrance Permits. Any Permit for Entrance Construction, Agriculture/Utility Entrance Permit, Single Family Entrance Permit, or Commercial Development Entrance Permit issued by a municipality or county shall conform to all sections of this Policy and the *Access Management Technical Design Manual*.

(2) The Application for Highway Entrance Permits has been approved by the Delaware Department of Transportation.

(3) The Application for Highway Entrance Permits is for a proposed entrance to a state-maintained street or highway that is within an incorporated municipality for municipal issuance or for non-incorporated land for county issuance in Delaware.

(4) The state maintained street or highway is classified in this Access Management Policy as an AL 6 roadway.

(5) The projected average daily traffic generation of the land development project is less than 1000 ADT.

PROCEDURES

No lot owner shall construct, open, reconstruct, maintain, modify or use any crossing, entrance, or access point onto any state-maintained highway, street or road, including any drainage modifications leading into or carried by the highway drainage system, without:

1. Complying with the Access Management Policy, and the rules, regulations and design standards contained in the *Access Management Technical Design Manual*;
2. Completing an Application for Highway Entrance Permits;
3. Having the application approved by the Department;
4. Obtaining a Permit for Entrance Construction as issued by the Department or a permit-issuing municipality or county; and,
5. Obtaining the appropriate Entrance Permit as issued by the Department or permit-issuing municipality or county.

Each lot owner shall obtain an Application for Highway Entrance Permits from the Delaware Department of Transportation, a Permit for Entrance Construction and the appropriate Entrance Permit from the Department or the appropriate permit-issuing municipality or county before performing any of the following activities as listed below. Separate applications and permits are required for each street or lot having direct access to a state highway when:

- 1) Constructing one or more entrances or streets intersecting a state highway;
- 2) Initiating the use of any entrance facility to a state highway;
- 3) Changing or modifying any existing entrance or street intersecting a state highway;
- 4) Constructing a sidewalk, bike path/way, curb, drain, bus pad, bus stop or any other related work within the limits of the state highway right-of-way;
- 5) Expanding the facilities on a lot having access to a state highway to the extent that a significant alteration in the character, flow or volume of traffic occurs;
- 6) Changing the use on a lot having access to a state highway such that a significant alteration in the character, flow, or volume of traffic occurs;
- 7) Subdividing a lot having access to a state highway (any resultant lot which has direct state highway access needs a permit);
- 8) Consolidating a lot having access to a state highway; or,
- 9) Initiating any activity which may interfere with the free and safe movement of normal traffic on a state highway.

An applicant shall complete the Application for Highway Entrance Permits form and submit the application along with required additional information to the appropriate District Office. The District Office will determine if permits are necessary, determine if a municipality or county can issue the permits, confirm that the applicant has

appropriately applied for the proper permit, coordinate the review with other Department offices as appropriate and issue letters confirming that a permit is not needed, when applicable.

Applications pertain to lots, not access points. Applications for entrances can only be signed by the lot owner or a representative of the owner bearing an appropriate power of attorney.

A permit shall not be issued to any individual, partnership, corporation or other entity until all previous obligations created with the Department are fully satisfied.

A Permit for Entrance Construction issued by the Department affords the permittee the right to construct an entrance under the terms and conditions contained in the permit. An Entrance Permit issued by the Department affords the permittee the right to maintain and use an entrance under the terms and conditions contained in the permit. Approval of an Application for Highway Entrance does not accord the applicant any of these rights.

Traffic control features and traffic control devices in the Department's right-of-way, including but not limited to, traffic signals, channelizing islands, medians, median openings, or any other transportation control features or measures in the state right-of-way are operational and safety features and characteristics of the state highway and are not means of access. The Department may install, remove or modify any present or future traffic control feature or traffic control device in the state right-of-way, such as a median opening, traffic signal or a feature affecting turning movements through an entrance, to promote traffic safety in the right-of-way or promote efficient traffic operations on the highway. An Entrance Permit is only issued for an entrance or entrances and not for any present or future median openings, signals, or traffic control devices at or near the permitted entrance(s). The Entrance Permit may describe these features but such description does not create a vested interest in such features.

Further guidance on applications and the permit approval process can be found in the Access Management Technical Design Manual.

SIGNIFICANT CHANGE IN USE

Whenever the use of an existing property is changed or expanded such that there will be a significant alteration in the character, flow or volume of traffic using a motor vehicle entrance, a new Entrance Permit shall be required. An existing Entrance Permit expires when the use of the lot served by a permit is expanded or changed such that it significantly alters the character, flow, or volume of traffic. The permittee or property owner shall contact the Department to determine if a new Entrance Permit and modifications to existing motor vehicle entrance(s) and other access facilities to the property are required. The Department will review the existing Entrance Permit and

assess the existing access facility to determine if it is adequate to handle the additional traffic. If the Department determines that the increased traffic generated by the property does not require modifications to existing access facilities, a new Application for Highway Entrance Permit will not be required and the property owner will be notified of such. If the Department determines that the increased traffic requires modifications to existing access facilities or the construction of additional access facilities, a new Application for Highway Entrance Permit shall be required and the property owner will be so notified.

The property owner or permittee may be required to reconstruct or relocate a motor vehicle entrance or provide other multimodal access facilities to conform to this Policy if a change in the use of the property results in a significant alteration in the type or nature of entrance operations. A change in use may include but is not limited to, structural modifications that increase floor area, a change in the type of business conducted, expansion of an existing business, a change in zoning, or a division of property creating new parcels, but does not include modifications in advertising, landscaping, general maintenance or aesthetics that do not affect internal or external traffic flow or safety.

For the purposes of this Policy, a significant alteration in the character, flow or volume of traffic using a motor vehicle entrance is established when, as a result of the change or expansion in use, both of the following events occur or are reasonably expected to occur:

When motor vehicle use exceeds the previously anticipated two-way motor vehicle traffic generated by the site by:

- 1) A 5% increase in ADT to the site (of the previously anticipated daily movements), and
- 2) 100 or more vehicular movements to and from the site.

Increases in site generated traffic will be estimated through the proper application of either the ITE Trip Generation Manual or other trip generation rates adopted or accepted for use by the Department.

A significant alteration in the character, flow or volume of traffic using a motor vehicle entrance also occurs when the use of a property or the use of a specific access, either of which has been in a state of non-use for one year or more, is recommenced. However, a property will not be considered to be in a state of non-use if the applicant can demonstrate that the non-use is a direct result of legal or regulatory actions that are beyond the control of the property owner or lessee.

Legal or regulatory actions that would qualify for this exception would include:

- compliance with environmental regulations such as but not limited to the removal/replacement of underground storage tanks, hazardous material removal, asbestos removal, etc. and,

- delays resulting from the processing of estates or civil actions that prohibit the continuance of a permitted use.

For this exception to be allowed, the property owner or lessee must demonstrate to the Department that diligent and good faith effort had been made to reestablish the use of the property.

CATEGORIES OF APPLICATIONS AND PERMITS

There are three different categories of applications and permits. They are based on both land use and traffic generation, as determined by reference to the Institute of Transportation Engineers (ITE) publication entitled 5th Edition Trip Generation, superseding edition or superseding rates adopted or accepted for use by the Department. For land uses not represented, or when the applicant believes these rates are not representative, the Department may accept alternative evidence of representative rates. The application and permit categories are:

Agriculture/Utility Application for Highway Entrance Permits and Permits for Entrance Construction and Agriculture/Utility Entrance Permit. These are for agricultural access points and for utility facility locations (towers, pipeline stations, pumping stations, etc.) where less than 10 ADT is expected.

Single Family Residential Application for Highway Entrance Permits and Permit for Entrance Construction and Single Family Residential Entrance Permit. These are for single family residential driveways and for all other uses under 10 ADT (each motor vehicle is counted twice, once in and once out). These applications are approved by the appropriate District Office of the Department.

Commercial Development Application for Highway Entrance Permit and Permit for Entrance Construction and Commercial Development Entrance Permit. These are for all commercial land uses. These applications are approved by the Department's Subdivision Engineer.

ADDITIONAL ENTRANCE PERMIT CATEGORIES

Temporary Entrance Permits

When a parcel of land is to be occupied for business purposes for less than 90 days in any contiguous 12 month period, a Temporary Entrance Permit may be issued in lieu of a permanent permit.

Upgrade Permit

An Upgrade Permit may be applied for when a property owner will be undertaking a modest improvement to an existing permitted lot which would bring:

- a.) the existing motor vehicle entrance closer to conformity with the standards of this Policy,
- b.) the non-motorized or transit access requirements closer to conformity with the standards of this Policy, and for either a) and b) above,
- c.) will upgrade either the safety of the adjacent state highway, the motor vehicle entrance, or non-vehicular access facilities or transit facilities or enhance non-vehicular accessibility to the site.

An Upgrade Permit includes all modifications to existing permitted entrances not included as a "Significant Change in Use". An Upgrade Permit will not be issued for entrances covered under section "Significant Change in Use".

An Upgrade Permit would include, but not be limited to, the following actions: increase or decrease of turning radii, channelization, turn lane construction, resurfacing, relocation to improve driveway spacing, widening or narrowing of the driveway to better meet Department standards, motor vehicle driveway closure, provision of pedestrian crosswalks, provision of sidewalks, and continuation of bicycle lane pavement markings across a motor vehicle entrance.

Construction Entrance Permit

A Permit for Construction Entrance is for the purposes of performing site work such as grading, paving or building construction. A Permit for Construction Entrance will only be granted after the Department has first approved the permanent entrance plan through the Application for Highway Entrance Permits process. Obtaining a Permit for Construction Entrance does not relieve the applicant of his/her responsibility of obtaining a permit to construct his/her permanent entrance facility (Permit for Entrance Construction). The permanent entrance facility shall be complete and accepted prior to use.

GRANDFATHERING PERMITS**Permitted Entrances**

Permitted entrances to a state maintained highway which were in existence prior to the effective date of this Policy and provided that the entrance(s) have been in continuous use are considered "grandfathered" and are considered currently valid Entrance Permits that may continue to provide connections to the state maintained highway, except as provided for in the subsection, "Significant Change In Use".

Permitted entrances that were in a state of non-use for a one year period or more prior to the effective date of this

Policy, may require a new Entrance Permit under the provisions contained in the section, "Significant Change in Use."

Unpermitted Entrances

Entrances without valid Entrance Permits are not "grandfathered" under this Policy and are subject to closure by the Department and shall be considered an illegal entrance.

An exception to this provision would be motor vehicle entrances in existence before August 15, 1983. These entrances shall be considered to have been constructed in accordance with an Entrance Permit, even if no permit was issued and are "grandfathered" entrances. All motor vehicle entrances constructed after August 15, 1983 must have had permits issued or they are presumed not to have permits.

ENTRANCE APPLICATION DENIAL CRITERIA

Entrance applications shall be denied if one of the following conditions are met:

- (1) If access would be to an AL1 or AL2 highway;
- (2) Where reasonable alternative motor vehicle access can be provided from roadways with lower access classifications for applications seeking direct access to highways with access classifications of either AL3, AL4, or AL5, as solely determined by the Subdivision Engineer;
- (3) When the approval of direct access would significantly compound problems at nearby intersections of public roads as applied to an AL3, AL4 or AL5 highway, as solely determined by the Subdivision Engineer;
- (4) When the approval of access would undesirably increase travel on residential streets or through neighborhoods, as solely determined by the Subdivision Engineer;
- (5) When the lot does not meet the entrance spacing criteria as applied to an AL3, AL4, and AL5 highway, and where reasonable alternative access is not used, and the proposed land use will generate motor vehicle trips in excess of that determined by this Policy for non-conforming land parcels (see provisions of this Policy for "Non-Conforming Land Parcels");
- (6) When the proposed access cannot meet the design or safety requirements for all access levels as solely determined by the Subdivision Engineer;
- (7) Except for AL6 roadways, when proposed access is for more than one motor vehicle entrance per lot or contiguous parcels (lots) owned by the same applicant with less than 1,000 feet of frontage, unless the applicant can demonstrate to the Subdivision Engineer's satisfaction that any additional motor vehicle access points would not be detrimental to the safety and operation of the highway, would significantly benefit the safety and efficiency of the highway, meets the criteria as outlined in "Number of Access Points" and any and all additional access, including

non-automobile access, complies with the design standards of this Policy and those contained in the Access Management Technical Design Manual.

Where a complete Commercial Application for Entrance Permit can not be approved, the Subdivision Engineer shall inform the applicant, within 30 days of receipt of the completed Entrance Application from the District Office, the reason(s) for non-approval, in writing.

Where a complete Agriculture/Utility Application for Entrance Permit or a Single Family Residential Application for Entrance Permit can not be approved, the District Permit Engineer shall inform the applicant in writing, within 10 days of receipt of a complete application, the reason(s) for non-approval.

7. ADDITIONAL ADMINISTRATIVE ISSUES

Violations

When the Department becomes aware that a permit condition has been violated, it shall notify the permittee, in writing, that the permittee has 30 days within which to remedy the violation. This notification shall explain the specific nature of the violation and provide an effective date of expiration. Failure to remedy the violation may result in the Department seeking criminal prosecution pursuant to Section 146 of Title 17. In addition to whatever legal or equitable remedies are available, the Department may install barricades across or remove any entrance or exit constructed, opened, reconstructed or maintained, modified, or used in violation of this Policy, at the expense of the property owner.

Appeals

Technical Appeals

Should the applicant object to the denial of an entrance permit application by the Department or object to any of the terms or conditions of a permit as required by the Department, a request for an appeal must be filed in writing to the Assistant Director of Design Support within 20 days of transmittal of notice of denial or transmittal of the permit for signature. The request for an appeal shall include the reasons for an appeal and shall include changes, revisions, or conditions that would be acceptable to the applicant.

Within 10 days of receipt of a request for an appeal, the Assistant Director of Design Support will determine whether to reconsider the permit denial or terms of the permit. If the denial or terms will be reconsidered by the Department, the Assistant Director of Design Support will schedule a meeting, within 10 days, with the applicant and provide the applicant with an opportunity to present additional information in support of the application. If the Assistant Director of Design Support does not respond to the request for an appeal within 10 days, the applicant may forward the request to the Deputy Director of Preconstruction directly.

The Assistant Director of Design Support shall render a decision in writing within 10 days of the meeting and so notify the applicant. If the Assistant Director of Design Support denies the applicant's request for an appeal or if the applicant does not agree with the appeal decision of the Assistant Director of Design Support, the applicant may submit an appeal to the Deputy Director for Preconstruction within 15 days after the Assistant Director of Design Support renders a decision.

The Deputy Director for Preconstruction shall schedule a meeting within 10 days of his/her receipt of the applicant's appeal. At the meeting, the applicant will be accorded an opportunity to present further information justifying the acceptance of the access plan. The Deputy Director for Preconstruction shall render a decision in writing within 10 days of the meeting and so notify the applicant. If the Deputy Director for Preconstruction denies the applicant's request for an appeal or if the applicant does not agree with the appeal decision of the Deputy Director for Preconstruction, the applicant may submit an appeal to the Chief Engineer within 15 days after the Deputy Director for Preconstruction renders a decision. If the Deputy Director of Preconstruction does not respond to the request for an appeal within 10 days, the applicant may forward a request to the Chief Engineer directly.

In reaching final Department decision, the Chief Engineer shall meet with the applicant within 15 days and shall consider the criteria set forth in this Policy, the applicant's right of reasonable access to the general system of streets and highways in the State, and the public's right and interest in a safe and efficient transportation system. The Chief Engineer shall render the final Department decision, with reasons, within 10 days of the meeting with the applicant and so notify the applicant in writing.

Procedural Appeals

Should the applicant believe the Department did not follow the procedures set forth in this Policy, the applicant may request a procedural review by the Access Management Appeals Committee (Appeals Committee) of the Council on Transportation which shall be comprised of at least three members of the Council on Transportation. Such reviews shall not include the review of any technical decisions made by the Department involving engineering judgement and/or principles.

Within 15 days of transmittal of the notice of denial by the Department, the applicant must file a request for review to the Appeals Committee via the Office of the Secretary. Within 15 days of receipt, the Chairperson of the Appeals Committee shall notify the applicant if the request is approved or denied. The Chairperson of the Appeals Committee, at his or her discretion, may elect to consult other members of the Appeals Committee and/or the Office of the Attorney General for guidance in deciding if a specific

request for a procedural appeal will be granted. If the request is not approved, the applicant will be informed, in writing, why the Chairperson of the Appeals Committee denied it. If the request is approved, the applicant will be notified of the date, time and location of the hearing. Hearings will be scheduled no less than once every three months. Once a request for an appeal results in the scheduling of a hearing date, subsequent requests for hearings will be scheduled for the same date as long as such a request is received within 15 days of the established hearing date. The Appeals Committee does however, reserve the rights to limit the number of appeals heard on any one date and to vary the frequency of hearings depending on the number and nature of requests received.

At the Appeals Committee hearing, the applicant will be afforded an opportunity to present information to support the assertion that the Department did not follow the procedures set forth in this Policy. The Department, through the Chief Engineer or his or her designee and at its option, shall also be afforded the opportunity to present its case. The Department also reserved the right to concede to the appeal, which would constitute a finding in favor of the applicant and eliminate the need for the hearing.

Within 30 days of the review hearing, the Appeals Committee shall reach majority agreements on its finding which it will issue in writing. If the Appeals Committee finds in favor of the applicant, the Department shall reconsider the request in accordance with the findings of the Appeals Committee. The findings of the Appeals Committee shall be binding on the Department. If the Appeals Committee finds in favor of the Department, its decisions shall represent the final level of decision on appeals as provided for in this Policy.

Upon exhausting all technical and procedural appeals, or at any time in the appeals process, the applicant will have the right to seek judicial action through the court system.

CHANGES IN CLASSIFICATION AND SPILLBACK RATES

Access Classification Changes

One year after the adoption of this Policy, any person may request a change in the access classification of a segment of the state highway system. The Department will review all proposed changes to access classifications received by the Department before September 1st of any calendar year. Once the Department has reviewed all proposed changes to access classifications received, a public hearing process will be conducted and the Policy shall be revised in accordance to the provisions contained in the section, "Access Policy Revisions". Requests received by the Department after September 1st will be reviewed in the upcoming calendar year.

Proposed changes, to access classification, shall be for the following segment length or greater:

1. On designated AL1, 2, or 3 roadways: one mile;
2. On designated AL4 roadways: one-half mile;
3. On designated AL5 roadways: one-half mile; and,
4. On designated AL6 roadways: one-half mile.

Each request for a change in access classification shall be submitted to:

Director of Planning
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903

The request shall include:

- (1) a description of the roadway segment, including Delaware Roadway Maintenance Number and segment length (in miles by milepost);
- (2) a list of the lots for which development applications or rezoning applications have been filed and the nature of such applications;
- (3) existing zoning for the parcels in the segment;
- (4) the proposed access level or roadway classification for the segment;
- (5) a statement of justification supporting the proposed change, identifying such factors as municipal master plans or county comprehensive plans that would indicate that the segment's present classification or level requires modification and identifying the negative consequences, if any, of retaining the current classification or level; and,
- (6) any other relevant data supporting the need to change the classification and/or level.

The Department shall send copies of the request for change of access classification via US Mail - Return Receipt Requested to the owners of all lots located along and within 200 feet beyond the ends of the subject highway segment. A cover letter sent by the Department shall advise the owners to submit written comments regarding the proposed change directly to the Department address specified above.

Any change to the access classification of a segment of highway shall be promulgated as a revision to the Policy and a public hearing and comment period shall be provided.

Spillback Rate Review

The Department will also review the spillback rate assigned to AL3, AL4 and AL5 highways annually. This review may result in proposed changes to the spillback rate assigned to each access level. Any changes to the spillback rate assigned to an access level shall be promulgated as a revision to the Policy and a public hearing and comment period shall be provided.

VARIANCES

If an applicant wishes to seek a variance from this Policy and the regulations and design standards contained in the *Access Management Technical Design Manual*, a written request must be submitted as an attachment to the Entrance Application. The written request and supporting documents must be submitted at the time of application. The request for variance shall state reasons why a variance is appropriate and include documentation to support the request. The analysis conducted by an applicant to support why a variance is appropriate must demonstrate that an exception from a standard better serves all motorists and other users of the highway to include those accessing transit, bicyclists and pedestrians and does not only benefit those motorists and other users of the highway attempting to access the applicant's property. In the review of such analysis conducted by an applicant, issues of traffic safety will be given more weight by the Department than issues of traffic efficiency or convenience.

In considering a variance request, the Department shall determine if:

- (1) Absent the approval of the variance, there is exceptional and undue hardship on the applicant;
- (2) A variance would meet acceptable engineering, operation and safety standards;
- (3) A variance is reasonably necessary for the safety, welfare and convenience of the public.

A variance shall not be contrary to the public interest and shall consider the function of the state highway segment, the access level of the roadway in question and the purposes of this Policy.

When a variance is approved, restrictions on the use of the entrance facility may be required and special terms and conditions may be imposed and contained on the Entrance Permit.

The recommendations and actions of the Department regarding the variance request shall be in writing and shall be included as part of the permit application files. Variance approval may only be authorized by the Chief Engineer.

No variance from the provisions contained in the sections on "Interchanges" or "Location of Traffic Signals" may be granted unless the variance can be granted without detriment to the safety and operation of the state highway and without impairing the intent and purpose of this Policy. The Department shall not grant a variance associated with the section, "Unsignalized Access Points" which would reduce the spacing distance to less than the distance required at 5 miles per hour less than the posted speed limit. The Department shall not grant a variance associated with the motor vehicle use limitations as determined for non-conforming lots.

The Department may waive certain application requirements as appropriate.

8. DEPARTMENT INITIATED ACTIVITIES**TRANSPORTATION IMPROVEMENT PROJECTS**

The Department, either in conjunction with its construction projects, in conjunction with projects advanced by others or through separate access enhancement projects, may construct, eliminate or modify transportation access facilities to provide access conforming to this Policy or bring transportation access closer to conformance with the Policy.

Altering the manner in which access is provided to existing developed properties can result in substantial improvements in the quality of through travel on arterial highways and can substantially improve the quality and modal diversity of access provided to properties and developments abutting highways. As a result, it is both appropriate and desirable for the Department to incorporate in its transportation improvement projects specific plans for constructing, eliminating or modifying transportation access facilities or for providing alternative access to properties. Such plans may include but are not limited to reconstructing entrances, eliminating entrances, constructing new collector and local streets which can provide alternative access to abutting properties, constructing service or frontage roads, and providing improvements on existing minor or regional arterials that allow these roadways to function as AL4 roadways.

All transportation improvement project plans developed by the Department must conform to the design standards, rules and regulations contained in the *Access Management Technical Design Manual* and policies contained herein. Any exceptions to the design standards or Policy are required to be justified through the Department's Policy regarding Design Exceptions and shall require the approval of the Chief Engineer.

Where the Department has determined for safety reasons or to address changing traffic conditions, to change or relocate an existing permitted driveway, the Department shall follow the procedures as described in the section titled, "Revocation of Entrance Permit When Alternative Motor Vehicle Access is Available".

Adjustments or modifications

Adjustments or modifications of access involve design changes to existing transportation access facilities or roadways to bring the existing transportation access facility or roadway into conformance with this and the *Access Management Technical Design Manual*.

Alternative access

Provision of alternative access as part of a Department initiated transportation improvement project involves the elimination of direct motor vehicle ingress, egress, or ingress and egress from an arterial highway and the provision of alternative motor vehicle access to a lower classified street,

highway, easement, service road, frontage road or common motor vehicle entrance. Elimination of direct motor vehicle access to the higher classified arterial highway shall be administered as a revocation of access.

CORRIDOR CAPACITY PRESERVATION PROGRAM

Nothing in this Policy shall be construed to supersede or abrogate the Corridor Capacity Preservation Program (CCPP). The CCPP allows DelDOT to purchase rights-of-way to preserve the integrity and capacity of key corridors, thereby protecting transportation investments that have already been made. At present, US 13 south of Dover, US 113 south of Camden, SR 1 from Dover to Five Points and SR 48 from Hercules Road to SR 41 are part of the CCPP. The access level assignments for each of these roadways will be determined through the planning processes undertaken in the Corridor Capacity Preservation Program and these roadways shall be depicted as such on the Access Management Classification Maps.

Whereas the CCPP focuses primarily on purchasing either a property's right of access or the property itself to ultimately achieve a controlled-access facility and is applied to a limited set of identified highways in Delaware, access management will apply to all state-maintained highways and shapes how property is provided access to the transportation system.

TRANSPORTATION ACCESS IMPROVEMENT PLANS

To facilitate implementation of this Policy, the Department, in cooperation with counties, municipalities, property owners and concerned members of the public, may prepare transportation access improvement plans documenting how transportation access to properties within a corridor can be provided, improved and enhanced to enable greater mobility for persons and goods.

Development of Transportation Access Improvement Plans may be required under the following conditions:

1. As part of a major transportation improvement in a corridor, including the extension or initiation of public transportation services.
2. In anticipation of new development in a corridor located within a Multimodal Transportation Investment Area.
3. To correct problems created by past highway development patterns by eliminating direct motor vehicle access to Access Level 2, 3 or 4 highways through the provision of alternative access.
4. To expand and enhance access by alternative travel modes.
5. To facilitate implementation of center-based land development plans.

Contents

Transportation Access Improvement Plans shall consist of a report and map. The report shall identify the transportation corridor and its limits, transportation improvements planned for the corridor, the existing transportation access conditions and future access conditions as proposed in the plan. The report shall also identify the cost of planned improvements, a schedule of improvements and financing plans for the improvements and any other appropriate factors.

The map shall be prepared at an appropriate scale (usually one inch equals 100 feet or 200 feet) and presented on plan sheets of appropriate size to permit convenient handling, storage, transport and display. The map shall depict the corridor study area, the location and character of all existing and proposed development and transportation improvements in the corridor, the location of all existing lots as well as any proposed new lots contained in approved subdivision plans, appropriate lot descriptions, identification of current zoning classifications. The map shall also locate and describe all existing traffic control devices, all public and private roadways, including but not limited to driveways, parking lots and circulation roadways, public transportation facilities including bus stops, sidewalks, bike facilities and other facilities which facilitate bicycle and pedestrian circulation and topographic and drainage facilities.

Process

The Department shall conduct the preparation of a Transportation Access Improvement Plan just as it does any other major planning study. The process for funding, project prioritization, and implementation will be the same as in common use by the Department.

9. ACCESS POLICY REVISIONS

The Department may modify this Policy as deemed appropriate.

Prior to the adoption of any major changes or revisions to this Policy, a public hearing shall be held. Effective public notice of such hearing shall be provided in accordance with Departmental Policy. The public shall be provided an ample comment period in accordance with Departmental Policy.

The Department shall modify the Access Policy as appropriate to support adopted statewide comprehensive development plans, adopted County Comprehensive Plans, adopted Municipal Master or Comprehensive Plans and the Department's Statewide Long-Range Transportation Plan.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 **Del.C.** 122(d))

Regulatory Implementing Order
School Transportation

I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks to amend the regulations on School Transportation. These regulations are found in the School Transportation Manual, April 1976. The School Transportation Manual is a combination of technical assistance, Department of Education regulations and sections of the Delaware Code, primarily Title 14, Chapter 29, and some parts of Title 14, Chapters 4 and 5 and in Title 21. The purpose of the amendments is to isolate the regulatory sections from the technical assistance and the Delaware Code citations. The amendments also reorganized the document combining topics that were previously fragmented, updated the language and the references and renumbered the sections as per our regulation format. There are twenty sections in the amended regulations. The following changes were made to the amended regulations:

- Deleted Chief State School Officer, State School Transportation Supervisor and Local School Transportation Supervisor responsibilities/job

descriptions.

- Deleted job certification requirements.
- Added student passengers need to walk around the crossing-control arm when passing in front of the bus.
- Added requirement for headlights or daytime running lights to be on when the bus is in operation.
- Deleted maintenance, inspection and service personnel descriptions.
- Deleted planning school sites for school buses section.
- Deleted list of allowable school bus load/assigned. Use the same planning factors of 13" per pupil for grades K-6 and 15" per pupil for grades 7-12.
- Deleted policy authorizing personnel to ride school buses during energy crises.
- Revised procedures for parents to request private transportation allowance.
- Revised the state drug and alcohol policy for school bus drivers and aides.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on November 16, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Fact

The Acting Secretary finds that it is necessary to amend these regulations because the existing regulations included technical assistance references and parts of the Delaware Code. Some areas also required updating and the regulations need to be put in the correct format.

III. Decision to Amend the Regulations

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit "B" are hereby amended. Pursuant to the provisions of 14 Del. C., Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit "B," and said regulations shall be cited in the Regulations of the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on December 16, 1999. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of December, 1999.

DEPARTMENT OF EDUCATION

Valerie A Woodruff
Acting Secretary of Education

Approved this 16th day of December, 1999.
STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

1100.2 Transportation

1.0 Responsibilities of Local Superintendents: Local District Superintendents or their designees shall assume the following responsibilities concerning the transportation of students:

1.1 Implement state school transportation regulations. Local school disciplinary policies shall include pupil behavior and discipline on the school bus.

1.2 Define and coordinate changes to school transportation operations impacting local district budget allocations with the Department of Education.

1.3 Provide resource material and encourage teachers to include instruction in passenger safety in the school curriculum.

1.4 Provide for close and continuous supervision of the unloading and loading zones on or near the school plant, and of the emergency drills.

1.5 Provide supervision for those students whose bus schedules require them to arrive at school before classes begin and remain after classes terminate.

1.6 Promote public understanding of, and support for the district's school transportation program.

1.7 Assume prime responsibility for student conduct.

2.0 Conditions for School Bus Contractors: School Bus Contractors shall agree to the following conditions in their contracts:

2.1 Follow all applicable federal, state, and local school bus regulations and policies.

2.2 Communicate effectively with the district transportation supervisor.

2.3 Dismiss a school bus driver when it can be shown that the driver is not satisfactorily performing driver tasks. District transportation supervisors may restrict a driver from operating in their school district.

2.4 Pay drivers and aides and provide substitute drivers and aides.

3.0 Responsibilities of School Bus Drivers: Local school districts shall have a policy concerning the responsibilities of school bus drivers which, at a minimum, includes the following:

3.1 A statement that the school bus driver is in full charge of the bus and pupils, has the authority of a classroom teacher and is responsible for the health, safety, and welfare of each passenger.

3.2 Statements listing the following specific responsibilities of the bus driver:

3.2.1 Operate the school bus in a safe and efficient manner.

3.2.2 Conduct pre-trip and post-trip checks on the vehicle.

3.2.3 Establish and maintain rapport with

passengers.

3.2.4 Maintain discipline among passengers.

3.2.5 Meet emergency situations effectively.

3.2.6 Communicate effectively with district and

school staff.

3.2.7 Maintain effective contact with the public.

3.2.8 Complete reports as required by the state

or school district.

3.2.9 Complete required training programs
satisfactorily.

3.2.10 Refrain from using profane or indecent
language or tobacco while on duty.

3.2.11 Dress appropriately.

3.2.12 Pickup and drop-off students at designated
stops.

3.2.13 Submit to periodic random drug and
alcohol testing and be subject to actions specified in the
Delaware Code and in federal requirements.

3.2.14 Report suspected cases of child abuse to
the school principal or designated official.

3.2.15 Notify the district transportation
supervisor of any school bus accident.

3.3 A statement requiring a report of a physical
examination on forms designated by the Department of
Education.

4.0 Qualifications and Responsibilities of School Bus Aides

4.1 Qualifications for School Bus Aides include the
following and shall apply to all new applicants and for any
person whose employment as an aide has lapsed for a period
of over one year. The drug policy applies to all bus aides.

4.1.1 Be at least 18 years of age.

4.1.2 Be fingerprinted to allow a criminal
history check at both state and federal level.

4.1.3 File with the district transportation
supervisor a notarized affidavit attesting to acceptable
criminal history pending an official state and federal
criminal record report.

4.1.4 Submit to the drug and alcohol testing
procedures established for school bus drivers and
subsequently, as a condition of continued employment,
submit to drug testing pursuant to the drug testing policy
established by the Department of Education.

4.1.5 The bus aide shall never have been
convicted of the manufacture, delivery, or possession with
intent to deliver a controlled substance or a counterfeit
controlled substance classified in Schedule I, II, III, IV, or V
of Chapter 47, Title 16 of the Delaware Code in this State or
any other jurisdiction.

4.1.6 The bus aide shall never have been
convicted of any other felony in this state or any other
jurisdiction in the last five years.

4.1.7 The bus aide shall never have been
convicted of any crime against a child in this State or any

other jurisdiction.

4.2 Local school districts shall have a policy
concerning school bus aides which, at a minimum, lists the
following responsibilities:

4.2.1 Assist in loading and unloading of
students, including lift operation.

4.2.2 Ensure that students and equipment are
properly strapped in seats. Adjust, fasten, and release
restraint devices for students and equipment, as required.
Monitor overall safety of students and equipment.

4.2.3 Ensure that all students remain seated at
all times.

4.2.4 Assist the driver during unusual traffic
conditions; act as a lookout if necessary when bus must be
backed.

4.2.5 Assist the driver in the enforcement of all
state and school district bus safety regulations.

4.2.6 Perform record keeping tasks related to
student attendance and bus assignment.

4.2.7 Monitor and report student misbehavior
according to established procedure.

4.2.8 Assist the driver in keeping the interior of
the bus clean.

4.2.9 Assist disabled students with personal
needs associated with their handicapping conditions.

4.2.10 Assist in bus evacuation drills.

4.2.11 Work cooperatively with all school
personnel and parents.

4.2.12 Perform other duties as assigned by the
district transportation supervisor or designee.

5.0 Student Conduct on School Buses: School Districts
shall have a policy concerning the behavior of students on
school buses that shall, at a minimum, contain the following
rules which if not followed may result in the suspension of
bus riding privileges.

5.1 Obey the driver promptly, and be courteous to the
driver and to fellow students. Students are to conduct
themselves while on the bus in such a way that it will not
distract the driver from the job of driving.

5.2 Be at their bus stop on time for pickup.

5.3 Wait for the bus on the sidewalk or shoulder, not
the roadway.

5.4 Keep a safe distance from the bus while it is in
motion.

5.5 Enter the bus without crowding or disturbing others
and occupy their seats immediately.

5.6 Get on or off the bus only when it is stopped.

5.7 Remain seated and facing forward. No student
shall occupy a position in the driver area in front of a
stanchion, barrier, or white floor line that may distract the
driver's attention or interfere with the driver's vision.

5.8 Stay out of the driver's seat. Also, unnecessary
conversation with the driver is prohibited while the bus is in

motion.

5.9 Follow highway safety practices in accordance with the Motor Vehicle Laws of the State of Delaware and walk on the side of the road facing traffic when going to or from the bus or bus stop along the highway. Before crossing the road to board the bus or after being discharged from the bus cross only upon an audible clearance signal from the driver.

5.10 Do not cross the road until it is clear of all traffic or that traffic has come to a complete stop and then walk in front of the bus far enough to be seen by the driver at all times.

5.11 Observe classroom conduct when on the bus.

5.12 Do not call out to passers-by or open the bus windows without permission from the driver, nor extend head or arms out of the windows.

5.13 Do not leave the bus without the driver's consent, except on arrival at their regular bus stop or at school.

5.14 Keep the bus clean, sanitary, and orderly and not damage or abuse the equipment.

5.15 Do not smoke, use profanity or eat or drink on the bus.

5.16 Do not throw articles of any kind in, out, or around the bus.

5.17 Other forms of misconduct that will not be tolerated are acts such as, but not limited to, indecent exposure, obscene gestures, spitting, and others that may be addressed in the school code of conduct.

6.0 Procedures for Operating Buses: Each school district shall adopt the following procedures for the operation of their school buses:

6.1 No person other than a pupil, teacher, school official, aide or substitute driver shall be permitted to ride on a school bus while transporting pupils. Exceptions may be made for parents involved in Department of Education educational programs that provide for transportation and others approved by the district transportation supervisor.

6.2 The driver shall maintain a schedule in the bus and shall at all times adhere to it. Drivers shall not be required to wait for pupils unless they can be seen making an effort to reach the bus stop.

6.3 The driver shall maintain discipline on the bus, and shall report cases of disobedience or misconduct to the proper school officials. No pupils may be ~~excluded~~ **[discharged]** from the bus for disciplinary reasons except at the home or school. The principal or designated school official shall be notified of such action ~~at the earliest possible moment after such exclusion~~ **[immediately]**. Any change to the action taken by the driver or any further disciplinary action to be taken is the responsibility of the principal or designated school official.

6.4 Pupils shall have definite places to get on and leave the bus, and should not be allowed to leave the bus at any

place other than the regular stop without written permission from their parents, and approval by the principal or designated school official, except in cases of emergency. Districts may adopt a more restrictive policy.

6.5 Buses shall be brought to a full stop before pupils are allowed to get on or off. Pupils are not permitted to ride outside or in any hazardous location in the bus including the area ahead of the stanchions, barriers, or white floor line designating the driver-area.

6.6 Buses shall not stop near the crest of hills, on curves, or on upgrades or downgrades of severe inclination. When stopped for the purpose of receiving or discharging pupils, the bus shall always be stopped on the right side of the road and as far off the paved or main traveled portion of the highway as the condition of the shoulder permits.

6.7 Pupils who must cross the road to board the bus or after leaving the bus shall cross at a distance in front of the bus and beyond the crossing control arms so as to be clearly seen by the driver and only upon an audible clearance by the driver. The driver shall attempt to signal pupils to cross by instructions through the external speaker of the public address system.

6.8 All loading and unloading of pupils shall be made from the service door. The rear exit door is not to be used except in cases of emergency or emergency drills. No object shall be placed in the bus that restricts the passage to the emergency door or other exits.

6.9 No one but the driver shall occupy the driver's seat. Pupils shall remain behind the white floor line.

6.10 Seats may be assigned to pupils by the driver, subject to the approval of a school official.

6.11 The doors of the bus shall be kept closed while the bus is in motion, and pupils shall not put their head or arms out of open windows.

6.12 When the bus is stopped on school grounds, students are aboard, and the motor is running, the transmission shall be in neutral (clutch disengaged) and the parking brake set. While on school grounds, drivers shall not leave their seat while the motor is running or leave the key in the ignition switch.

6.13 Fuel tanks shall not be filled while the engine is running or while pupils are in the bus.

6.14 Weapons of any kind are not permitted on a school bus.

6.15 Dogs or other animals are not permitted on school buses unless a medical physician determines it is required for a student.

6.16 A school bus shall not be used for hauling anything that would make it objectionable for school use or unsafe for passengers.

6.17 Band instruments, shop projects and other school projects shall not be permitted on the bus if they interfere with the driver or other passengers. The aisle, exits, and driver's vision shall not be blocked.

6.18 Bus stops on roadways with three or more lanes (with oncoming traffic) must be made on the right side of the road. Students shall not be required to cross more than two lanes of traffic when entering or leaving the bus.

6.19 Headlights or daytime running lights shall be on at all times when the bus is in motion.

6.20 On the bus route every effort should be made to load children before turn-arounds are made and unload them after the turn-around is made.

6.21 Backing of school buses is prohibited, except in unusual circumstances:

6.21.1 A school bus shall not be driven backwards on school grounds unless an adult is posted to guard the rear of the bus.

6.21.2 When backing is unavoidable extreme caution must be exercised by the bus operator and an outside observer should be used if possible.

7.0 Accident Reports: All drivers or contractors shall complete accident reports and submit them to the district person in charge of transportation in order to assure accurate information pertaining to school bus accidents.

7.1 The following information shall be included on all school bus accident reports and be maintained in the district transportation files:

7.1.1 A description, preferably using diagrams, of the damage to each vehicle in addition to estimates of damage costs.

7.1.2 A description of all personal injuries.

7.1.3 A list of passengers and witnesses.

7.1.4 ~~A complete description of the drivers of each vehicle involved including name, date of birth, sex, years of driving experience, license number, and occupation.~~ [Name, address and telephone number of the driver.]

7.1.5 Follow-up information, such as the actual cost of repairs, should be added to the accident report wherever it is filed; i.e., in federal, state or local offices, so that the record of the accident is complete. Other pertinent information relating to the accident that should be added later, if the information is readily available, includes:

- Disposition of any litigation.
- Disposition of any summonses.
- Net effects of all personal injuries sustained, including medical care given, physician's fees, hospital expenses, etc.
- Amount of property damage other than to vehicles involved.
- Any corrective actions taken against the school bus driver, e.g., training, suspension, or dismissal.
- A summation of the driver's total accident record so that each completed report form will contain a listing of the total number of accidents that the driver has had.

8.0 Transportation Benefits: Transportation benefits shall be provided for pupils in grades K-6 whose legal residences are one (1) mile or more from the public schools to which they would normally be assigned by the district administrations and for pupils in grades 7-12 whose legal residences are two (2) miles or more from the public schools to which they would normally be assigned by the district administrations.

8.1 For the purpose of these regulations, the "legal residence" of the pupil is deemed to be the legal residence of the parent(s), legal guardian(s), or caregiver as described in Title 14, Section 202(e)(3). Daycare facilities may be designated as a pupil's residence for pickup and drop off.

8.2 To determine pupil eligibility for transportation benefits, measurement shall be by the most direct route provided by a public road or public walkway. The measurement shall be from the nearest point where a private road or walkway connects the legal residence of the pupil with the nearest public entrance of the school building to which the pupil is normally assigned by the school district administration.

8.3 All school bus routes shall be measured from the first pick-up point to the respective schools served in the approved sequence, and then by the most direct route back to the first pick-up point.

8.4 Additional bus routes required after the opening of school shall be approved by the Department of Education and supported by evidence of need to include: enrollment number changes, descriptions of existing routes in the area of proposed additional service, the run times, and actual loads. A description of the proposed route shall also accompany the request.

8.5 Transportation for eligible pupils may be provided from locations other than their legal residence provided that:

8.5.1 Such pickup and discharge points as approved by the district administration are in excess of the relevant one and two mile limits from the school to be attended, and such transportation to be provided will be to the public school to which the pupil is assigned by the district administration.

8.5.2 Such transportation to be provided be on the same bus and/or route to and from the school attended by the pupil (i.e. each student is entitled to one seat on one bus) except that permission may be granted on a year-by-year basis by the district administration for eligible pupils to ride other buses if seats are available and does not create additional expense to the State.

8.5.3 The limitation pertaining to "same bus and route" indicated above is not applicable to pupils attending vocational-technical schools or kindergartens operating one-half day sessions.

8.6 A spur to a bus route (where a bus leaves a main route) shall not be scheduled unless the one-way distance is greater than ½ mile. Requests for exception due to a unique

traffic hazard from a parent must be in writing, approved by the local school board, and submitted through the Chairman of the Unique Hazard Committee for review.

8.7 Permission may be granted for pupils to ride a school bus on a temporary or permanent basis when the pupil has a medical statement from a physician that certifies that the pupil is unable or should not walk from home to school and return.

9.0 Bus Capacities: Bus capacities for children in grades K-6 shall be established by the manufacturer on the basis of 13 inches per child, and for Grades 7-12 secondary pupils the capacity shall be established on the basis of 15 inches per child. A mixture of the criteria will be used to plan loads when pupils come from both of the above groups. Actual bus loads may not exceed this guidance. Standees shall not be permitted under normal circumstances; however, exceptions may be made in emergency situations on a temporary basis.

10.0 Loading and Unloading: Each school shall have a loading and unloading dock or area, rather than load or discharge passengers onto the street. On school grounds all other traffic is prohibited in the loading and unloading area during school bus loading/unloading operations.

11.0 Unique Hazards: Unique hazards are considered to be conditions or situations that expose the pedestrian to rare or uncommon traffic dangers. This definition is not intended to include hazards representative of situations which may exist throughout the State.

11.1 Procedures for handling Unique Hazards requests.

11.1.1 When the request for relief originates with parents of pupils affected or vested officials, such as State and local police representatives, Safety Council representatives, and legislators, it shall be presented in writing to the local school authorities.

11.1.1.1 The local school administration shall make every effort to resolve problems identified by the parents, vested officials, or by the local district staff.

11.1.1.2 If the problem cannot be resolved by the local school administration, the request shall be forwarded to the local board of education for appropriate action. If the local board of education has explored all of the local alternatives to resolve the problem without success, a request by board action shall be made to the Chairman of the Unique Hazards Committee (Education Associate for School Transportation).

11.2 The request to the Unique Hazards Committee must include:

11.2.1 The original request from the parents, vested officials, or the district staff.

11.2.2 A statement of the specific hazard and area

involved including maps showing the specific location, points of concern and schools attended.

11.2.3 Number and grades of children involved.

11.2.4 School schedule and the time children would normally be walking to and from school in the area of concern.

11.2.5 List any actions to resolve the problem taken by the local school administration.

11.2.6 List any actions to resolve the problem taken by the local board of education.

11.2.7 List any actions to resolve the problem taken by the town, the city or county.

11.3 The Unique Hazards Committee will process the request and report its findings and recommendations to the Department of Education for their consideration and action. A copy of the report will also be forwarded to the local board of education involved.

11.4 The Unique Hazards Committee consists of representatives from the Department of Transportation; the New Castle County Crossing Guard Division; Delaware Safety Council; Traffic Control Section, the Delaware State Police; and the Department of Education Education Associate for School Transportation (Chairman).

11.5 Unique Hazards Committee Recommendations Appeal Process

11.5.1 Appeals to the Unique Hazards Committee recommendations approved by the State Department of Education must be in writing and from the local board of education.

11.5.2 The local school board shall, before making an appeal, make every effort to resolve the problem. If, in the opinion of the local board of education, reconsideration is needed by the Unique Hazards Committee, the appeal, along with pertinent information, should be forwarded to the Chairman of the Unique Hazards Committee.

11.5.3 The Unique Hazards Committee will submit to the State Department of Education its recommendations regarding the appeal for reconsideration by the local board of education. A copy of the report will also be forwarded to the local board of education involved.

12.0 Contingency Plans: Each school district shall have contingency plans for inclement weather, accidents, bomb threats, hostages, civil emergencies, natural disasters, and facility failures (environmental/water, etc.). These plans shall be developed in cooperation with all those whose services would be required in the event of various types of emergencies. The school transportation supervisor, school administrators, teachers, drivers, maintenance and service personnel, students, and others shall be instructed in the procedure to be followed in the event of the contingencies provided for in the plans.

13.0 Reimbursements for School Bus Ownership and or Contracts: School buses may be either state owned/district operated or contracted.

13.1 Reimbursements for buses operated by the district shall be on the basis of the formula for district operated buses unless otherwise approved by the Department of Education.

13.1.1 Drivers employed by the district shall be paid on the regular payroll of the district. When drivers are employed in a dual capacity there shall be strict accounting for salary division.

13.2 Reimbursement for buses operated on contract shall be on the basis of the approved formula or of a bid if the amount should be less.

13.2.1 Contractors shall be paid regularly at the end of the month. The total contract shall be paid in ten (10) installments, with the first payment at the end of September.

13.3 Any transportation costs caused by grade reorganizations and/or pupil re-assignments during the school term after October 1, other than the occupancy of a new school building, shall be at the expense of the local school district unless approved by the Department of Education.

13.4 Bills unpaid from Transportation funding lines that have not been encumbered as of June 30, shall be the responsibility of the local school district.

13.5 Reimbursement to the local school district for contracts or for district-owned or leased buses shall be made on the basis of a Department of Education formula. ~~approved by the State Board of Education.~~ This formula shall take into consideration school bus cost and depreciation, fixed charges, operations, maintenance, driver and aide wages. Reimbursement shall be made only for transportation of eligible pupils and exceptions approved by the Department of Education. ~~and the State Board of Education.~~

13.6 Reimbursement for buses when there are Specially Declared Holidays or Strikes by Teachers.

13.6.1 School bus contractors shall be paid the normal rate of pay as provided for in their contract, less the allowance for operation including fuel, oil, tires, and maintenance.

13.6.2 Contractors with buses assigned to midday kindergarten or vocational-technical trips shall be reimbursed for the amount of the driver's allowance plus the administrative allowance.

13.6.3 School districts operating district-owned, leased, or lease-purchase buses shall be reimbursed based on the formula for district reimbursement, less the allowance for operation which includes fuel, oil, tires, and maintenance.

13.6.4 Districts with buses assigned to midday kindergarten or vocational-technical trips shall be reimbursed for the amount of the driver's allowance plus the

administrative allowance.

13.6.5 The Delmar School District shall be reimbursed on the basis of the additional days necessary to operate as a result of the agreement with the Wicomico County Board of Education for the Delmar, Maryland elementary schools.

14.0 Transportation Formulas for Public School Districts Operating District, Lease, or Lease Purchase Buses Items which are not on this list must be approved by the State Department of Education. Any purchase, commitment, or obligation exceeding the transportation allocation to the district is the responsibility of the district.

14.1 The following items may be used for the purpose of providing pupil transportation in accordance with the regulations of the Department of Education.

14.1.1 Advertising including equipment, routes, supplies, and employees.

14.1.2 Communication systems including two-way radios, cellular phones, and AM-FM radio.

14.1.3 Fuel including gasoline, diesel, propane, kerosene, storage tanks, pumps, additives, and oil.

14.1.4 Leasing/rental including tools, equipment, storage facilities, buses, garage space, and office space.

14.1.5 Office supplies and materials including computer hardware, computer software, data processing, maps, postage, printing, subscription, and measuring devices.

14.1.6 Safety materials including audio-visual aids, restraining vests, belts, safety awards, pins, patches, certificates, wheelchair ramps, wheelchair retainers, printing, handout materials, pamphlets, training materials, subscriptions, and bus seats.

14.1.7 Salary/wages including attendants (aide) as approved by the Department of Education when required in a student's IEP, dispatchers, drivers, maintenance helpers, mechanics, mechanics helpers, office workers, secretarial, substitute drivers, supervisory (other than State supported supervisor or manager), and State provided employee benefits.

14.1.8 Shop facilities including heat, electric, water, sewer, security, fences, lights, locks, guards, bus storage, janitorial supplies, brushes, mops, buckets, soap, tools, maintenance vehicles, grease, service vehicles, and work uniforms for maintenance staff.

14.1.9 Sidewalks including construction of sidewalks, footbridges, etc. that would be offset in reduced busing costs in 5 years or less, with prior approval of Supervisors of Transportation and School Plant Planning.

14.2 Special 01-60 state funds are provided to school districts for training supplies. This account may also be used for reimbursements for state provided equipment and services.

14.3 Examples of Programs Excluded from State

Reimbursement:

14.3.1 Extracurricular Field trips

14.3.2 Transportation of pupils from one school to another for special programs (e.g., music festivals, Christmas programs, etc.)

14.3.3 Transportation of pupils to and from athletic contests, practices, tutoring, band events, etc.

14.3.4 Post-secondary classes

14.3.5 Federal programs

14.3.6 Alternative school transportation when not using a shuttle concept that is as efficient as a shuttle concept.

14.3.7 Choice school transportation outside of the school district or outside of the attendance area of school that the bus normally serves.

14.3.8 Charter school transportation outside of the school district.

15.0 Transportation Allowances for Individuals: Requests for transportation allowances shall be made in writing to the Department of Education by districts with justification. This information is necessary in order for the Department to determine a pupil's eligibility. The responsibility for establishing a claim for transportation allowances rests upon the district and claimant.

15.1 All requests shall be signed by the parent or guardian and certified by the superintendent, principal or the principal teacher of the school to be attended. In case of a car pool, only the driver shall be paid.

15.2 Payments or reimbursements for transportation by private means shall be on the following basis:

15.2.1 When adequate public services is available, the public service rates shall be used.

15.2.2 When public service is not available and it is necessary to provide transportation by private conveyance, the allowance shall be calculated at the prevailing state rate per mile for the distance from the home to the school or school bus and return twice a day, or for the actual distance traveled.

15.2.3 Districts shall maintain a monthly record of mileage travelled on a form provided by the Department of Education.

15.2.4 Any exception or variation must be approved by the Department of Education.

16.0 Cost Records: Cost Records shall include the following costs directly attributable to the transportation of eligible students on district school buses:

16.1 Total expenditures by funding code.

16.2 Wages of the Drivers.

16.3 Bus maintenance costs (expenditure for all bus supplies, repairs and routine service).

16.4 Cost of accidents, including bus repairs.

16.5 Indirect costs (all those costs not included in

above categories and all costs associated with those who supervise the school transportation operation).

17.0 Bus Replacement Schedules: The time begins for a new bus when it is placed in service. A bus shall have the required mileage prior to the start of the school year. Once a bus is placed in service for the school year, it will not be replaced unless it is unable to continue service due to mechanical failure.

17.1 The following age and mileage requirements apply:

17.1.1 12th year must be replaced (it may then be used as a spare); or

17.1.2 150,000 miles no matter age of bus; or

17.1.3 7 years plus 100,000 miles; or

17.1.4 may be replaced after 10 years.

17.2 Contractors shall be reimbursed for their eligible school buses for the annual allowances permitted by the Formula. New (unused) buses placed in service in a year following their manufacture shall begin their 7 years of capital allowances with the rate specified for the year of manufacture and continue in year increments until completed.

17.3 School buses purchased with state-allocated transportation funds may be used by the school districts for purposes other than transportation of pupils to and from school. This type of use shall be at the district's expense and shall occur only during a time when the bus is not making its normal school run.

- In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State-allocated transportation funds for purposes other than the regular transportation of pupils to and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

18.0 School Bus Inspections: The Delaware Motor Vehicle Division has two periods of time when all school bus owners shall have their buses inspected each year, once during January or February and the second yearly inspection during June, July, or August.

19.0 Transportation for Students with Disabilities: Transportation or a reimbursement for transportation expenses actually incurred shall be provided by the State for eligible persons with disabilities by the most economically feasible means compatible with the person's disability subject to the limitations in the following regulations:

19.1 When the legal residence of a person receiving tuition assistance for private placement is within sixty (60) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement for transportation on a daily basis at the per mile rate allowed by

the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a day, or for actual mileage traveled, whichever is less.)

19.2 When the legal residence of a person receiving tuition assistance for private placement is in excess of sixty (60) miles (one way) but less than one hundred (100) miles (one way) from the school or institution to be attended, the person shall be eligible for round trip transportation reimbursement at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement on a weekly basis and on such other occasions as may be required when the school is not in session due to scheduled vacations or holidays of the school or institution. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a week. The weekly basis is to be determined by the calendar of the school or institution to be attended.)

19.3 When the legal residence of a person receiving tuition assistance for private placement is in excess of one hundred (100) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement on the basis of one round trip per year from the person's legal residence to the school or institution and return, and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution. (Round trip is considered to be from the person's legal residence to the school or institution to be attended and from the school or institution to the legal residence of the person on an annual basis or at such times as indicated above.)

19.4 Reimbursement shall be computed on the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle from the legal residence to the point of embarkation and return to the legal residence and for the actual fares based on the most economical means of transportation from the point of embarkation to the school or institution to be attended; the return trip shall be computed on the same basis.

19.5 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is determined by the local district to be more economically feasible.

19.6 The local district of residence shall be responsible for payment of all such transportation reimbursement when it is determined by the local district to be more economically feasible.

19.7 All requests for payment shall be made by the

parent or legal guardian or other person who has control of the child to the transportation supervisor responsible for transportation in the district of residence at a time determined by the district but prior to June 5 of any year.

19.8 When reimbursements are made they shall be based on required documentation to support such payment.

19.9 The legal residence for the purpose of these regulations is defined as the residence of the parent, legal guardian or other persons in the state having control of the child with disabilities and with whom the child actually resides.

20.0 Drugs and Alcohol: The illegal use, sale, or possession of intoxicants, narcotics, prescription drugs, or other controlled substances, or being under the influence of the same, by a school bus driver or aide (hereinafter referred to as employee) while on the job or on school property, or on school buses or vehicles shall result in immediate suspension without pay and recommendation for job termination.

20.1 The Delaware Department of Education, in order to promote the health and safety of all employees and students, shall routinely conduct drug/alcohol testing of all employees to determine fitness for duty. The following procedures shall be instituted in implementing the drug/alcohol testing program:

20.1.1 District supervisory personnel or supervisory employees of the school bus contractors who determine whether an employee must be drug/alcohol tested based on "reasonable cause" shall receive a minimum of one (1) hour of training on the specific physical, behavioral and performance indicators of probable drug/alcohol abuse.

20.1.2 Pre-employment Testing: No employee will be hired unless that person passes a drug test.

20.1.3 Random Testing: At least 50% of all employees shall be drug/alcohol tested and 10% (as required by federal DOT) of all employees shall be alcohol tested every 12 months. The employees for testing shall be selected by using a random number table that is matched with an employee's social security number.

20.1.4 Testing Based on Reasonable Cause: Whenever there is reasonable cause to believe that an employee is using a prohibited drug/alcohol, such employee shall be drug/alcohol tested. The decision to test will be based on a reasonable and articulate belief that the employee is using a prohibited drug/alcohol on the basis of specific, contemporaneous physical, behavioral or performance indicators of probable drug/alcohol use. The supervisor of the employee shall make the decision to test with the assistance of a district employee or supervisory employee of the school bus contractor trained in detecting possible drug/alcohol use.

20.1.5 Supervisors and employees shall all receive at least a one hour seminar educating them about: the critical problem of alcohol and drug abuse in the work place;

the drugs to be tested for; how the drug testing will be conducted; drug screening; security and chain-of-custody procedures for the sample; federally approved drug testing facilities are used; medical review doctors receive the results; and employee assistance program offerings.

20.1.6 If an employee is under medical treatment involving a controlled substance or medication which might impair response and affect fitness for duty, documentation should be on file in the office of the District Transportation Supervisor of the driver's fitness to drive a school bus. A telephone call shall be made to the physician's office by the company/agency responsible for the impairment screening, substantiating that the documentation is a true and correct statement of the driver's fitness issued by the physician. A notation of the time, date and person obtaining that substantiation shall be duly noted. Determination as to the driver's fitness for duty shall be made only after such substantiation is made.

20.1.7 Any employee failing a drug/alcohol test without documentation of acceptable medical cause shall be immediately suspended without pay and recommended for termination. Refusal to be tested pursuant to these regulations shall also be grounds for termination of employment.

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

DELAWARE STATE LOTTERY OFFICE

Statutory Authority: 29 Delaware Code,
Section 4805(a) (29 Del.C. 4805(a))

Order

Pursuant to 29 Del. C. §4805(a), the Delaware State Lottery Office hereby issues this Order regarding proposed amendments to the existing Lottery Regulations. Following notice and a request for public comments, the Lottery makes the following findings and conclusions:

Summary of Evidence and Information Submitted

1. The Lottery posted public notice of the proposed amendments in the Register of Regulations on November 1, 1999 and in the News-Journal and Delaware State News. The Lottery proposed to amend section 29(1)(L) to add a definition of "technically infeasible" to the regulations for Non-Discrimination on the Basis of Disability in Delaware Lottery Programs. The Lottery further proposed to amend section 29(6)(d) to permit an exemption for retailers whose landlords refuse to pay for required improvements. Under this proposed amendment, the exemption would be for the

period of the current lease. The Lottery further proposed to amend section 29(6)(f) to permit an exemption for retailers when the removal of architectural barriers is technically infeasible.

2. On November 30, 1999, the Lottery received a letter from Laura J. Waterland, Esquire of the Disabilities Law Program of Community Legal Aid Society, Inc. commenting on the proposed amendments. The Disabilities Law Program suggested three to the proposed amendments in its written submission. First, the written submission requested an amendment to section 29(6)(a) to add the phrase "Current Retailers" to the end of the first sentence of the Regulation. Second, the submission requested an amendment to section 29(6)(a) to include a provision that "exemptions shall not be granted to lottery sites housed in a building built or substantially altered after January 26, 1992". Third, the written submission requested an amendment to section 29(6)(f) to add the following provision: "An exemption may be granted if a retailer can demonstrate that the removal of architectural barriers is not possible due to technical infeasibility. The exemption only extends to the barrier removal that is technically infeasible. The retailer is required to make any changes or alterations that do not fall within the definition of 'technically infeasible.'"

3. On November 30, 1999, the Lottery conducted a public hearing at the Lottery Office. The Lottery received public comments from Laurence Field of A. Laurence Field, Inc. Mr. Field has previously performed consulting work for the Lottery in reviewing Lottery retailer sites for compliance with the Lottery accessibility regulations. Mr. Field stated that the proposed amendments to the Regulations were in response to two areas that the existing Regulations do not adequately address. First, Mr. Field stated that the Lottery has encountered cases where a landlord has refused to participate in the barrier removal requirements of the accessibility process. In some instances, the retailer had difficulty in obtaining financial assistance or permission from the landlord to remove significant barriers on the landlord's property. Mr. Field stated that this situation presents a burden for retailers who may be called on to remove architectural barriers that are not even on or near the retailer's premises. The proposed amendment to Regulation 29(6)(d) would address this situation by permitting a temporary exemption for the term of the retailer's lease. Second, Mr. Field stated that the proposed amendment to Regulation 29(6)(f) would allow an exemption for technical infeasibility. The exemptions under the current Regulations do not provide for an exemption for structural changes to a retailer's premises that are technically infeasible. Mr. Field explained that the proposed definition for "technical infeasibility" is based on the same definition used in the Americans with Disabilities Accessibility Guidelines. Mr. Field stated that the "technical infeasibility" exemption

refers to instances where it would be an undue burden for the business entity to remove structural barriers. Mr. Field provided an example of a retail site with a barrier that would be "technically infeasible" to remove. Mr. Field described a corner store in an urban setting with a beam in the front of the store. In this example, removal of the beam would weaken the structure and any such request would clearly be denied by the local building inspector. In such a case, Mr. Field believed that the retailer would fall within the exemption for technical infeasibility. The technical infeasibility exemption is closely related to the existing exemption for "legal impediment to barrier removal." However, in some cases, Mr. Field stated that technical infeasibility would not infringe or violate a local law or ordinance. Mr. Field stated that the proposed amendments were necessary for the Lottery to have a complete process for its Regulations for Non-Discrimination on the Basis of Disability in Delaware Lottery Programs.

Findings of Fact

4. The public was given notice and an opportunity to provide the Lottery with comments on the proposed Regulations. The evidence received by the Lottery is summarized in paragraphs #2-3.

5. The Lottery finds that the proposed amendments to the Regulations are necessary based on the testimony of Mr. Field offered at the public hearing. The Lottery finds that the proposed amendment to the landlord refusal exemption, Regulation 29(6)(d) is necessary to address ongoing situations in which landlords refuse to remove barriers near the site of leased premises of Lottery retailers. The Lottery finds that the proposed exemption for "technical infeasibility" is necessary as it tracks the provision in the Americans with Disabilities Act Accessibility Guidelines. The overall purpose of the Lottery's Regulations, as provided in section 29(2)(a), is to ensure the Delaware Lottery's compliance with the ADA so that people with disabilities have access to Delaware Lottery programs. The Lottery has relied on the persuasive testimony of Mr. Field that the proposed exemption for "technical infeasibility" would permit the Lottery to more completely ensure compliance with the overall purpose of the Regulations. The Lottery believes that its Regulations should contain the same type of exemptions, including "technical infeasibility" that are permitted under the federal law.

6. The Lottery has considered the proposed amendments to the Regulations suggested by the Disabilities Law Program. The first proposal suggested an amendment to Regulation 29(6)(a) to add the phrase "Current Retailers" to the Regulation. This proposed amendment does not appear to the Lottery to be necessary. The existing Regulation 29(6)(a) states that its provisions apply to a "retailer's request" for exemptions. Under Regulation

29(1)(i), a "Lottery Retailer" or "Retailer" "means a business entity housed in a specific retail facility that is under license with the Delaware Lottery to provide lottery related services." (emphasis added). It is clear from the existing provisions that the exemptions mentioned in Regulation 29(6)(a) only apply to retailers already under license with the Delaware Lottery. Therefore, the Lottery finds that the first proposed amendment would be duplicative.

7. The second proposal of the Disabilities Law Program would add language to Regulation 29(6)(a) to provide that exemptions shall not be granted to lottery sites housed in building built or substantially altered after January 26, 1992. This submission states that the technical infeasibility exemption should only apply to "existing facilities" and should not apply to post-1992 "new or altered" facilities. Initially, the Lottery notes that this proposal appears to be beyond the scope of the proposed amendments. The proposal also appears intended to only allow application of the technical infeasibility exemption to properties built or altered before January 26, 1992. However, as proposed, the amendment would apply to all exemptions. The proposal is also unclear on the reason for the use of the January 26, 1992 date and does not provide a definition for the term "substantially altered." For these reasons, the Lottery does not find that this proposed amendment should be adopted by the Lottery.

8. The third proposal of the Disabilities Law Program suggests an amendment to Regulation 29(6)(f) that would essentially clarify that the technical infeasibility exemption only applies to barrier removals that are "technically infeasible." The proposed amendment further suggests the addition of a sentence stating that the retailer must make changes that do not fall within the definition of "technically infeasible." The Lottery finds that the proposed Regulation 29(6)(f) is drafted with sufficient clarity so that persons will understand that the "technically infeasible" exemption only applies to barrier removal that is "technically infeasible." Since the proposed Regulation adequately spells out the scope of the exemption, the Lottery finds that the third proposal should not be adopted.

Conclusions

9. The proposed amendments were promulgated by the Lottery Office in accord with its statutory duties and authority as set forth in 29 Del. C. §4805(a). The Lottery concludes the proposed amendments necessary for the effective enforcement of 29 Del. C. §4805 and for the full and efficient performance of the Lottery's duties thereunder. The Lottery concludes that the proposed amendments are consistent with the overall purpose of the Lottery's Regulations for Non-Discrimination on the Basis of Disability in Delaware Lottery Programs. The Lottery concludes that the proposed amendments are necessary to

provide for a complete and workable set of Regulations in this area. The Lottery concludes that the adoption of the proposed amendments to the Regulations would be in the best interests of the citizens of the State of Delaware and consonant with the dignity of the State and general welfare of the people under §4805(a).

10. The Lottery will adopt the proposed Amended Regulations pursuant to 29 Del.C. §4805 and 29 Del.C. §10118. The Lottery has considered the written comments of the public prior to issuance of this Order. A copy of the adopted amendments to the Regulations is attached as exhibit #1 and incorporated as part of this Order.

11. The effective date of this Order shall be ten (10) days from the date of publication of the Order in the Register of Regulations on January 1, 2000.

IT IS SO ORDERED this 15th day of December, 1999
Brian Peters
Deputy Director of Marketing
Delaware State Lottery Office

Rule (29) Non-Discrimination on the Basis of Disability in Delaware Lottery Programs

(1) Definitions

a) "Accessible" means complying with the technical requirements found in the ADA Accessibility Guidelines (ADAAG).

b) "Accessible Route" means a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

c) "ADA" means the Americans with Disabilities Act (42 United States Code. §§12101-12213 and 47 United States Code §225 and §611).

d) "Director" means the Director of the State Lottery Office.

e) "Entrance" means any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

f) "Facility" means all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

g) "Lottery Program" means on-line and instant games offered to the public through retailer licensees.

h) "Lottery" or "State Lottery Office" means the lottery established by the Delaware State Lottery Law,

Chapter 348, Volume 59, of the Laws of Delaware.

i) "Lottery Retailer" or "Retailer" means a business entity housed in a specific retail facility that is under license with the Delaware Lottery to provide lottery related services.

j) "Inspection Report" means a completed survey of the retailer or applicant facility that identifies barriers to program accessibility, if any and suggest possible solutions.

k) "Service Site" means an area within a lottery retailer facility where a customer can purchase a lottery related product. This is usually the cashier's station.

qualified historic building or facility that is listed in or is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under State or Local law.

l) "Technically Infeasible" means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

(2) Purpose

a) The Americans with Disabilities Act (P.L. 101-336, U.S.C. §§ 12131-12134), known as the ADA, prohibits discrimination on the basis of disability in the delivery of programs offered by entities of state or local government. The purpose of this regulation is to ensure that the Delaware Lottery is in compliance with the ADA by ensuring that people with disabilities have access to Delaware Lottery programs.

b) In defining the scope or extent of any duty imposed by these regulations including compliance with the standard of accessibility defined in paragraph 3(b), higher or more comprehensive obligations established by otherwise applicable federal, state or local enactment may be considered.

(3) General Requirements

a) Prohibition of discrimination. No lottery retailer shall discriminate against any individual on the basis of a disability in the full and equal enjoyment of lottery related goods, services, facilities, privileges, advantages, or accommodations of any lottery licensed facility.

b) Standard of accessibility. Each Retailer is required to meet a standard of accessibility that enables people with disabilities, including those who use wheelchairs, to enter the lottery licensed facility and participate in the lottery program. An accessible route must be provided comprised of the following accessible elements:

1) Parking if parking is provided to the general

public;

- 2) Exterior route connecting parking (or a public way if no parking is provided) to an accessible entrance;
- 3) Entrance;
- 4) Interior Route connecting the entrance to a service site.

c) Each element shall meet the design standards set forth in the ADA Accessibility Guidelines (ADAAG) published in the Federal Register on July 26, 1991.

(4) New License Applicants

a) License applicants. The State Lottery Office shall inspect the site of applicants for compliance with this regulation prior to granting a license. The State Lottery Office will not grant a license to an applicant who is not in compliance with this regulation.

b) Inspection reports. The State Lottery Office, prior to granting a license, shall provide lottery applicants with an Inspection Report that shall identify barrier removal actions, if any, necessary to provide program accessibility. The identified actions must be completed prior to the granting of a license.

(5) Current Retailers

a) The State Lottery Office shall inspect the site of each lottery retailer for compliance with this regulation.

b) Inspection reports. The State Lottery Office shall provide to all current retailers an Inspection Report that shall identify barrier removal actions necessary to provide program accessibility. The identified actions must be completed within 90 days of receipt of the Inspection Report.

c) Extensions. The Director may grant an extension of up to 90 days to allow a current retailer to complete barrier removal actions identified in the Inspection Report.

(i) Any request for an extension must be in writing, and shall include specific reasons for an extension and supporting documentation.

(ii) The Director shall grant an extension only upon showing of good cause.

(6) Permitted exemptions

a) The following exemptions to the requirements of this rule may be granted by the Director. The Director shall review the circumstances and supporting documentation provided by the retailer to determine if the retailer's request for an exemption should be granted. The Director shall determine the type and scope of documentation to be required for each exemption classification. All decisions made by the Director shall be final; any retailer whose request for an exemption is denied by the Director shall be required to satisfy the requirements of this rule as a condition for maintaining its eligibility for a Lottery retailer contract.

b) Historic properties. To the extent a historic building is exempt under federal law, and if barrier removal

would threaten or destroy the historic significance of the structure, this rule shall not apply to a qualified historic building or facility that is listed in or is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under State or Local law.

c) Legal impediment to barrier removal. Any law, act, ordinance, state regulation, ruling or decision which prohibits the lottery retailer from removing a structural impediment or from making a required improvement to the facility may be the basis for an exemption to this rule. A lottery retailer requesting an exemption for a legal impediment will not be required to formally seek a zoning variance to establish such impediment, but will be required to document that they have applied for and have been refused whatever permit(s) are necessary to remove the identified barrier(s).

d) Landlord refusal. An exemption may be granted based on the refusal of a landlord to grant permission to a Lottery retailer to make ~~structural~~ improvements required by the Lottery under this rule or based on the refusal of a landlord to pay for improvements required by the Lottery under this rule. The exemption shall only apply to the retailer's current term, and does not include any possible renewal periods under the lease. To request such an exemption, the retailer must submit documentation to the Director that the retailer requested the Landlord's permission and financial participation to make the required structural improvements, that such request was denied by the landlord, and the reasons for the denial. In making a decision on the exemption request, the Director shall take into consideration, but not be limited to, the sufficiency of the reasons provided by the landlord for denying the retailer's request.

e) Undue financial hardship. A limited exemption may be granted if a retailer can demonstrate that the cost of removing a structural barrier or of making the required structural modification(s) to the retailer's facility is an undue financial hardship in that the cost of making such a change(s) exceeds 25% of the retailer's compensation from the Lottery for the prior calendar year (An annualized sales figure based upon the retailer's most current 13-week sales period shall be used for those retailer locations with less than a full year's history of sales.) Under the terms of this limited exemption, a retailer would be required to annually make those improvements and modifications that can be financed within an amount that is approximately equal to 25% of the total compensation earned from the Lottery in the prior calendar year. This requirement would continue on a year-to-year basis until all the improvements and modifications required by this rule have been completed. A retailer shall provide all supporting documentation requested by the Director to substantiate the, cost estimates of making the required improvements to the retailer's location.

f) Technical Infeasibility. A permanent exemption

may be granted if a retailer can demonstrate that the removal of architectural barriers identified in the inspection report is not possible due to technical infeasibility. If such a claim is made, the Lottery may have the barrier removal action evaluated by a person knowledgeable in accessibility codes and construction to determine the merits of the claim.

g) Alternative methods. Where an exemption is granted in accordance with the provisions of this subchapter, the lottery retailer shall make the lottery related goods and services available through alternative methods. Examples of alternative methods include, but are not limited to:

- 1) Providing curbside service;
- 2) Directing by signage to the nearest accessible lottery retailer.

(7) Complaints Relating to Non-Accessibility

a) An aggrieved party may file an accessibility complaint with the Lottery Director or designee for review. Complaints must be in writing and, where possible, submitted on an ADA complaint form. As soon as practical, but not later than 30 days after the filing of a complaint, each complaint will be investigated. After the completion of the investigation, if the agency determines that the lottery retailer is not in compliance with this regulation, a letter of non-compliance will be issued to the lottery retailer with a copy to the complainant. If the lottery retailer is determined to be in compliance, a letter so stating will be mailed to the retailer and complainant. Regardless of whether a complaint has been filed, the agency will issue a letter of non-compliance within 30 days after the completion of an onsite inspection of the lottery retailer facility if the agency determines that the lottery retailer is not in compliance with this regulation.

b) If the letter of non-compliance shows deficiencies in the accessibility of the retailer facility, the lottery retailer shall submit a plan to the agency within 30 days of the issuance of the letter of non-compliance. The plan shall describe in detail how the lottery retailer will achieve compliance with this regulation. Compliance shall be accomplished within 90 days of the letter of non-compliance. The Lottery may, upon request, grant the lottery retailer additional time to submit the plan for good cause.

c) Within 20 days of the submission of the plan to the agency, the Lottery shall notify the lottery retailer of the agency's acceptance or rejection of the plan. If the plan is rejected, the notification shall contain the reasons for rejection of the plan and the corrections needed to make the plan acceptable to the Lottery. If the retailer agrees to make the required corrections, the Lottery shall accept the plan as modified.

d) If a retailer fails to submit a plan within 30 days of issuance of the letter of non-compliance and has not

requested an extension of time to submit a plan, the Lottery may proceed to initiate termination proceedings.

e) If approved, the plan must be completely implemented within 60 days of the agency's notice of approval. The Lottery may, upon request, grant the lottery retailer additional time for good cause. Notice of any extension will also be sent to the complainant, if applicable. Any such extension will commence immediately upon expiration of the first 60 day period.

f) If the corrective action taken by the lottery retailer corrects the deficiencies specified in the letter of non-compliance as originally issued or as later revised or reissued or if the onsite inspection of the lottery retailer facility reveals compliance with this regulation, the Lottery will issue a notice of compliance. Until this notice is issued, a complaint will be considered pending.

g) Failure to make the identified modifications in compliance with the accessibility standards and within the required time period will result in the initiation of proceedings to suspend or revoke the lottery license by the agency.

h) A license will be suspended if the Lottery determines that the lottery retailer has made significant progress toward correcting deficiencies listed in the compliance report, but has not completed implementation of the approved compliance plan. If the Lottery determines that the lottery retailer has not made a good faith effort to correct the deficiencies listed in the compliance report, this inaction will result in the revocation of the lottery license for that lottery licensed facility.

i) While proceedings to suspend or revoke a lottery retailer's license are pending pursuant to this regulation, and until a notice of compliance is issued pursuant to subsection (c) of this section, the Lottery shall withhold incentive payments from the lottery retailer. In addition, if a license is revoked pursuant to this regulation, and incentive payments and other privileges have been withheld from the affected retailer pending review of the complaint, the lottery retailer forfeits any claim to such incentive payments or other privileges.

(8) Request for Hearings

a) If the Lottery proposes the denial of an application for a license or the suspension or revocation of a lottery retailer's license pursuant to this regulation, the agency shall give the applicant or lottery retailer written notice of the time and place of the administrative hearing not later than 30 days before the date of the hearing.

b) All relevant rules of evidence and time limits established in these rules shall apply to hearings conducted under this regulation.

(9) Non-Exclusivity of Remedies

a) Remedies established by these regulations are not intended

to supplant, restrict or otherwise impair resort to remedies otherwise available under law, including those authorized by the ADA and Del. Code Ann., title 6, ch. 45 (1993).

Gregg C. Sylvester, MD
Secretary

12/14/99

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,
Section 122 (16 Del.C. 122)

In the Matter Of:

Adoption of State of Delaware
Rules and Regulations Governing
The Conrad State 20/J-1 Visa Waiver
Program

Nature of the Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing The Conrad 20/J-1 Visa Waiver Program. The DHSS's proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 16 Delaware Code Chapter 1, Section 122.

On November 1, 1999, DHSS published in the Delaware Register of Regulations Volume 3 Issue 5 (pages 603-615) its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 2, 1999, or be presented at a public hearing on November 30, 1999, at which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Two supporting comments were given at the public hearing. A summary of the comments are part of the accompanying "Summary of Evidence."

Findings of Fact:

The Department finds that the proposed regulation as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing The Conrad State 20/J-1 Visa Waiver Program are adopted and shall become effective January 11, 2000 after publication of the final regulation in the Delaware Register of Regulations.

Summary of Evidence

**State of Delaware Rules and Regulations Governing the
Conrad State 20/J-1 Visa Waiver Program**

A public hearing was held on November 30, 1999, in room 309 of the Jesse Cooper building in Dover, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed Department of Health and Social Services Rules and Regulations Governing the Conrad State 20/J-1 Visa Waiver Program. The announcements regarding the hearing were advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Ms. Gina Bianco Perez, Director, Health Systems Development, Division of Public Health, made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Two public comments (verbal) supporting the proposed regulations were received during the public hearing.

The first comment supported the regulatory requirement of physician needs studies as a way to recruit specialty physicians and to address the medically under served populations in Delaware. Rather than using the first come, first served selection method, the regulation uses a needs-based selection method, which will more appropriately disperse the 20 allotted J-1 slots.

The other comment centered around the regulations creating standards to analyze the market as well as justify the needs and desires to recruit J-1 Visa Waiver applicants.

There were no changes made to the draft regulations.

The public comment period was open from November 1, 1999 to December 2, 1999.

Verifying documents are attached to the Hearing Officer's record. The regulations have been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

***Please note that no changes were made to the regulation as originally proposed and published in the November 1, 1999 issue of the Register at page 603 (3 DE Reg 603 (11/1/99)). Therefore, the final regulation is not being republished. Please refer to the November 1, 1999 issue of the Register of contact the Department of Health and Social Services.**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 505 (31 Del.C. 505)

Nature Of The Proceedings

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update Medical Assistance eligibility rules. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the April 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 1, 1999, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

One written comment supporting this proposed rule was received.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the April 1999 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective January 10, 2000.

Gregg C. Sylvester, M.D.
Secretary, 6/6/99

14950 Guaranteed Eligibility

Section 1902(e)(2) of the Social Security Act, as amended by the Balanced Budget Act of 1997, permits up to six months of guaranteed eligibility for individuals if they are enrolled in a managed care organization. Delaware has selected this option with ~~the earliest an~~ effective date of ~~July December~~ 1, 1999.

The six-month period of guaranteed eligibility is available to Medicaid recipients enrolled in the Diamond State Health Plan.

The rules in this section set forth the eligibility requirements, conditions and limitations, and medical coverage benefits for the six-month period of guaranteed eligibility.

14950.1 Six Month Period of Guaranteed Eligibility

A six-month period of guaranteed eligibility is defined as a six-month period of continuous enrollment in a managed

care organization under the Diamond State Health Plan (DSHP). The following individuals may be found eligible for a six-month period of guaranteed eligibility:

1. a first-time Medicaid recipient
2. an individual who becomes eligible for Medicaid again following a period of at least one month of ineligibility for Medicaid.

The guaranteed eligibility period begins with the first of the month in which the individual enrolls in the DSHP and continues for six consecutive months. The individual who is enrolled in DSHP retains eligibility for Medicaid services, even if the individual otherwise loses Medicaid eligibility.

14950.2 Limitations on Guaranteed Eligibility

Individuals who have been continuously enrolled in the Diamond State Health Plan for a period of six months or more are not eligible for guaranteed eligibility as of:

- a) the effective date of this policy
- b) the effective date of managed care enrollment following a Diamond State Health Plan open enrollment period.

14950.3 Individuals Who Become Eligible for Medicaid Following at Least One Month of Ineligibility

Individuals who are disenrolled from the DSHP and are subsequently reenrolled because they become eligible for Medicaid again, may receive a new six-month period of guaranteed eligibility. This includes individuals who have already had a six-month period of guaranteed eligibility. There must be at least a one-month lapse in Medicaid eligibility in order to receive a new guaranteed eligibility period.

These individuals will be reenrolled in the same managed care organization in which they were a member prior to the month of ineligibility for Medicaid unless it has been more than one year since the loss of eligibility. If it has been more than one year since the individual's eligibility for Medicaid, the individual may choose a new managed care organization.

14950.4 Individuals Who Become Exempt from Enrollment in the DSHP

For individuals who become exempt from enrollment in the DSHP during the six-month period of guaranteed eligibility but are still Medicaid eligible, the remaining portion of the six-month guaranteed eligibility period will accrue to the individual. If the individual loses his or her exempt status and must reenroll, the remaining portion of the guaranteed eligibility period will be granted to the individual.

14950.5 Individuals Who Transfer Between DSHP Managed Care Organizations

For individuals who transfer from one DSHP managed

care organization to another DSHP managed care organization prior to the end of the six-month period of guaranteed eligibility, the remaining portion of the guaranteed period will follow the individual to the new managed care organization.

14950.6 Termination of Guaranteed Eligibility

The six-month period of eligibility terminates the earliest of the last day of the sixth month following the effective date of enrollment in the DSHP or the last day of the month in which the individual:

- a) dies
- b) moves out-of-state or is no longer a Delaware resident
- c) becomes an inmate of a public institution
- d) requests termination of Medicaid eligibility and/or managed care enrollment
- e) fails to complete the final determination as a presumptively eligible pregnant woman
- f) becomes eligible for long term care Medicaid
- g) becomes eligible for or entitled to Medicare
- h) becomes eligible for CHAMPUS
- i) becomes eligible for another comprehensive medical managed care program administered by the Delaware Medical Assistance Program
- j) is otherwise ineligible for the DSHP.

14950.7 Coverage Under the DSHP Benefits Package

The service package and wrap around services are described in the General Policy Section of the Delaware Medical Assistance Program Provider Services Manual.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 **Del.C.** 505)

In the Matter Of:

Revision of the Regulations
Of the Medicaid/Medical
Assistance Program

Nature of the Proceedings

The Delaware Department of Health and Social Services (“Department”) initiated proceedings to update eligibility policies related to the Assisted Living Medicaid Waiver Program. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the November 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 1999, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings of Fact

The Department finds that the proposed changes as set forth in the November 1999 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective January 10, 2000.

Gregg C. Sylvester, M.D.
Secretary

December 14, 1999

***Please note that no changes were made to the regulation as originally proposed and published in the November 1, 1999 issue of the Register at page 617 (3 DE Reg 617 (11/1/99). Therefore, the final regulation is not being republished. Please refer to the November 1, 1999 issue of the Register of contact the Department of Health and Social Services.**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 **Del.C.** 505)

In the Matter Of:

Revision of the Regulations
Of the Medicaid/Medical
Assistance Program

Nature of the Proceedings

The Delaware Department of Health and Social Services (“Department”) initiated proceedings to update eligibility policies related to the Assisted Living Medicaid Waiver Program. The Department’s proceedings to amend its regulations were initiated pursuant to 29 Delaware Code

Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the November 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 1999, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings of Fact

The Department finds that the proposed changes as set forth in the November 1999 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective January 10, 2000.

Gregg C. Sylvester, M.D.
Secretary
December 14, 1999

***Please note that no changes were made to the regulation as originally proposed and published in the November 1, 1999 issue of the Register at page 618 (3 DE Reg 618 (11/1/99)). Therefore, the final regulation is not being republished. Please refer to the November 1, 1999 issue of the Register of contact the Department of Health and Social Services.**

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**
Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. 6010)

**Re: Amendment of Regulation No. 36 - Acid Rain
Program of the Regulations Governing the Control of
Air Pollution**

**Date of Issuance: December 13, 1999
Effective Date of the Amendments: January 11, 2000**

I. Background

A public hearing was held on Tuesday, November 30, 1999, at the DNREC Auditorium in Dover to receive comment on a proposed revision to Regulation No. 36 — Acid Rain Program of the *Regulations Governing the Control of Air Pollution*. Evidence of the legal notice was entered into the record, and from this I conclude that proper notice of the hearing was provided as required by law. The record shows that the public made no comments concerning this proceeding. In addition, the record of the public hearing was held open for public comment until Wednesday, December 1, 1999, but no comments were received after the public hearing. After the close of the public record, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated December 8, 1999, and that memorandum is expressly incorporated herein by reference.

II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated December 8, 1999, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

III. Order

In view of the above, I hereby order that Regulation No. 36 - Acid Rain Program of the *Regulations Governing the Control of Air Pollution*, as proposed at the hearing and as set out in Attachment A to this Order, be amended in the manner and form provided for by law.

IV. Reasons

Adopting the proposed amendments to Regulation No. 36 of the *Regulations Governing the Control of Air Pollution* will further the policies and purposes of 7 Del.C. Chapter 60, because it will reduce air pollutants that have detrimental effects on air quality resources resulting in negative effects on public health and welfare. In addition, adopting the proposed amendment will meet Delaware's obligation under the Clean Air Act Acid Rain Program and will provide the Department with the authority to implement and enforce the applicable provisions of the Acid Rain Program in a manner that will enhance the environment by regulating harmful air pollutants.

Nicholas A. Di Pasquale
Secretary

Regulation No. 36, Acid Rain Program

The provisions of Parts 72 through 78, of Title 40 of the Code of Federal Regulations, dated July 1, ~~1995~~ 1999, are hereby incorporated into this regulation by reference. Within this regulation, the term "permitting authority" shall mean the Secretary of Delaware's Department of Natural Resources and Environmental Control.

**DEPARTMENT OF
PUBLIC SAFETY**

**BOARD OF EXAMINERS OF PRIVATE
INVESTIGATORS AND PRIVATE
SECURITY AGENCIES**

Statutory Authority: 24 Delaware Code,
Section 1304(b)(3) (24 **Del.C.** 1304(b)(3))

Pursuant to the Guidelines in 29 Del. C. Section 10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing held on April 23, 1998 on the proposed amendment of promulgated rules and regulations 1994-1 - Firearm's Policy, 1994-3 - Personnel Rosters and Job Assignments, 1994-5 - Uniforms, Patches, Badges, Seals, Vehicular Markings, 1998-11 - Use of Animals, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed amendment.

2. The Board expressed its desire to amend the rule to clarify the shooting requirement, including ammunition, and the type of weapons carried by security guards.

The Board expressed its desire to amend the rule to clarify the requirements for the personnel rosters and job site lists.

The Board expressed its desire to amend the rule to clarify the use of lights and sirens on patrol vehicles used by security guards.

The Board expressed its desire to add the rule to clarify the use of animals on patrol.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the amendment of the rule. The written comments and oral testimony received are described in

paragraph 1.

4. The Board finds that the amendment of this rule will clarify the shooting requirements, including ammunition, and the type of weapons carried by security guards.

The Board finds that the amendment of this rule will clarify the requirements for the personnel rosters and job site lists.

The Board finds that the amendment of this rule will clarify the use of lights and sirens on patrol vehicles used by security guards.

The Board finds that the addition of this will clarify the use of animals on patrol.

5. The Board finds that the amendment will have no adverse impact on the public.

6. The Board finds that the amendment is well written and describes its intent to amend the rule to clarify the shooting requirements, including ammunition, and the type of weapons carried by security guards.

The Board finds that the amendment is well written and describes its intent to amend the rule to clarify the requirements for the personnel rosters and job site lists.

The Board finds that the amendment is well written and describes its intent to amend the rule to clarify the use of lights and sirens on patrol vehicles used by security guards.

The Board finds the amendment is well written and describes its intent to add the rule to clarify the use of animals on patrol.

Conclusion

7. The proposed rules were promulgated by the Board in accord with the statutory duties and authority as set forth in 14 Del. C. Section 1304 et. seq. and, in particular, 24 Del. C. Section 1304(b)(3).

8. The Board deems these amendments necessary and expedient to the full and official performance of its duties under 24 Del. C. Section 1304 et. seq.

9. The Board concludes the amendments of these rules will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the amendments of these rules pursuant to 24 Del. C. Section 1304(b)(3) and guidelines of 29 Del. C. Section 10118 of the Administrative Procedures Act. See, *Strauss v. Silverman*, Del.Sup., 399 A.2d 192 (1979).

11. These amended rules replace in their entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be April 23, 1998.

13. Attached hereto and incorporated herein this order are the amended rules marked as exhibit A, exhibit B, exhibit C, and exhibit D and executed simultaneously by the Board

on the 23rd day of April, 1998.

Colonel Alan D. Ellingswoth, Chairman

APPROVED AS TO FORM:

Rosemary Killian

Deputy Attorney General

11/04/1994-1 - Firearm's Policy

No person licensed under Title 24 Chapter 13 Sections 1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course given by a Board approved certified firearms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a firearm must ~~certify at least three (3) times a year by a Board approved certified firearms instructor~~ shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these three, there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.

A. Firearms - approved type of weapons

1. 9mm
2. .357
3. .38
- [4. .40]**

B. All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.

C. Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.

D. All individuals must qualify with the same type of weapon that he/she will carry.

E. All ammunition will be factory fresh (~~ie. no reloads). no hot loads). Ammunition will be P or +P, no +P+ ammunition.~~

F. The minimum passing score is 75%. All licenses are valid for a period of one (1) year.

11/04/1994-2 - Nightstick, Pr24, Mace, Peppergas And Handcuffs

To carry the above weapons/items a security guard must have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Proof of these certifications must be provided to the Director of the Board of Examiners. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director of the Board of Examiners.

11/04/1994-3 - Personnel Rosters And Job Assignments

Amended 04/23/98

Anyone licensed under Title 24 Chapter 13 shall submit an alphabetical personnel roster and a job ~~assignment~~ site list to the director of the Detective Licensing ~~Unit~~ Section by the ~~first tenth of every month.~~ Alphabetical personnel rosters shall include the full name, DOB, race, sec. expiration date, and position code of each individual in your employ. For example:

Mark A. Smith01/25/60WM01/25/99SG
Helen E. White03/17/71BF03/17/00FA
John F. Henry05/23/43BM05/23/00PI
James D. Williams12/03/40WM06/30/99MG
Frank G. Montgomery07/24/55BM06/30/99LH
Anne L. Murray10/20/40WF06/30/99CO

<u>SG</u>	<u>Security Guard</u>
<u>FA</u>	<u>Firearm's</u>
<u>PI</u>	<u>Private Investigator</u>
<u>MG</u>	<u>Delaware Manager</u>
<u>LH</u>	<u>License Holder</u>
<u>CO</u>	<u>Corporate Officer</u>

Job ~~assignment~~ site lists shall include the name, address, ~~and~~ location, ~~that each employee is assigned to work and the~~ hours of coverage. For example:

The DuPont Site Industry
Barley Mill Road
2200 - 0600 Hours, Monday, Wednesday, and Friday

11/04/1994-4 - Record Book; Right Of Inspection

All persons licensed under Title 24 Chapter 13 shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include the list of weapons/items each employee is qualified to carry, the certification dates, scores and the serial number of the weapon/item, if applicable.

11/04/1994-5 - Uniforms, Patches, Badges, Seals, Vehicular Markings Amended 04/17/97 Amended 04/23/98

No person licensed under Title 24 Chapter 13 shall wear or display any uniform, patch, or badge unless first approved by the Board of Examiners. The use of "patrol" and/or "officer" on any type of uniform, patch, badge, seal, vehicular marking or any type of advertisement shall first be proceeded by the word "security". Under no circumstances shall a uniform, patch, badge, seal, vehicular marking, letterhead, business card or any type of advertisement contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub

division, or any facsimile of the aforementioned seals or crests.

A. Advertisement and other forms of publications:

No letterhead, business card, advertisement, or other form of publication including but not limited to uniforms, patches, badges, seals, vehicular markings and similar items may be used or displayed unless first approved by the Board of Examiners. No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.

All uniforms displaying a patch must contain an approved patch that is not generic in nature. The patch must have the name of the agency printed on it.

Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

11/04/1994-6 - Qualified Manager

A qualified manager cannot be employed by more than one company at the same time. For example; a person cannot serve as a qualified manager for two separate private security agencies and/or private investigative agencies.

11/04/1994-7 - Employment Notification

It shall be the responsibility of each person licensed as a security guard under Title 24 Chapter 13 to notify the Director of the Board of Examiners, in writing within 24 hours, if such person is terminated or leaves one agency for employment with another or works for more than one security guard agency. Under no circumstances will a security guard be permitted to be employed by more than two agencies at a time. It is also the responsibility for each licensed security guard to advise his/her employer(s) of whom he/she is employed with (i.e. If a security guard is employed with two security guard agencies, both employers must be made aware of this fact as well as the Director of the Board of Examiners.)

A. Employers Responsibility

A license holder of a private security agency shall notify the Director within 24 hours, if an employee is terminated and/or ceases employment.

11/04/1994-8 - Criminal Offenses

In addition to those qualifications set forth in Title 24 Chapter 13 Section 1314, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III or Offensive Touching misdemeanor within the last three (3) years.

11/04/1994-9 - Private Investigators

A. A Private Investigator must not be a member or employee of any Law Enforcement Organization, as defined by the Council on Police Training.

B. At the time of processing, a Private Investigator

must provide proof of employment by a licensed Private Investigative Agency with the Private Investigator application signed by the employer. The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be re-licensed with the new employer and a new identification card will be issued as in the previous procedure.

C. A licensed Private Investigator may only be employed by one licensed private investigative agency at a time.

11/04/1994-10 - Licensing Fees

A. Class A License - Private Investigative Agency
In-State License Holder

Individual - No Employees - Not Corporation
\$230 for 2 years to expire June 30th of odd
years

\$5,000 Bond

\$1,000,000 Liability Insurance per occurrence

Corporation - Has Employees

\$345 for 2 years to expire June 30th of odd years

\$10,000 Bond

\$1,000,000 Liability Insurance per occurrence

License Holder

\$345 for 2 years to expire June 30th of odd years

Out-of-State

Individual and Corporation

\$10,000 Bond

\$1,000,000 Liability Insurance per occurrence

Office Manager

\$230 for 2 years to expire June 30th of odd years

\$5,000 Bond

B. Class B License - Private Security Agency

In-State License Holder

Individual - No Employees - Not Corporation

\$230 for 2 years to expire June 30th of odd years

\$5,000 Bond

\$1,000,000 Liability Insurance per occurrence

Corporation - Has Employees

\$345 for 2 years to expire June 30th of odd years

\$10,000 Bond

\$1,000,000 Liability Insurance per occurrence

\$10,000 Bond

\$1,000,000 Liability Insurance per occurrence

Office Manager

\$230 for 2 years to expire June 30th of odd years

Individual and Corporation

Out-of-State

License Holder

\$345 for 2 years to expire June 30th of odd years
\$5,000 Bond

C. Class C License - Private Investigative & Private Security Agency

In-State License Holder

Individual - No Employees - Not Corporation
\$345 for 2 years to expire June 30th of odd years
\$10,000 Bond
\$1,000,000 Liability Insurance per occurrence
Corporation - Has Employees
\$520 for 2 years to expire June 30th of odd years
\$15,000 Bond
\$1,000,000 Liability Insurance per occurrence

Out-of-State

Individual and Corporation
License Holder
\$520 for 2 years to expire June 30th of odd years
\$15,000 Bond
\$1,000,000 Liability Insurance per occurrence

Office Manager

\$345 for 2 years to expire June 30th of odd years
\$10,000 Bond

D. Class D License - Armored Car Agency License

License Holder

Corporation - Has Employees
\$345 for 2 years to expire June 30th of odd years
Banking Commissioner License
Title 5 Chapter 32 Section 3203

04/23/1998-11 - Use Of Animals

The use of animals is prohibited in the performance of private security activities.

GOVERNOR'S EXECUTIVE ORDERS

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER SEVENTY**

TO: HEADS OF ALL STATE DEPARTMENTS,
AGENCIES AND AUTHORITIES, AND ALL
POLITICAL SUBDIVISIONS AND
GOVERNMENTAL UNITS OF THE STATE OF
DELAWARE.

RE: AMENDMENT TO EXECUTIVE ORDER
NUMBER TWENTY-SEVEN REGARDING THE
VIOLENCE AGAINST WOMEN ACT
IMPLEMENTATION COMMITTEE

WHEREAS, the Violence Against Women Act Implementation Committee was created by Executive Order Number Twenty-Seven on February 21, 1995;

WHEREAS, under that Executive Order, the Implementation Committee is charged with a number of responsibilities related to the implementation of the Violence Against Women Act, including making recommendations for the distribution of funding available under that federal legislation;

WHEREAS, paragraph 2(f) of that Executive Order describes the process for review and approval of Implementation Committee recommendations by the Criminal Justice Council and the Domestic Violence Coordinating Council, prior to submission of the recommendations to the Governor; and

WHEREAS, the process outlined in paragraph 2(f) must be clarified with regard to Implementation Committee recommendations that are approved by a majority vote of one Council but not the other.

NOW, THEREFORE, I, THOMAS R. CARPER, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. Executive Order Number Twenty-Seven is amended by striking paragraph 2(f) and inserting in lieu thereof the following: "consistent with the Plan, making recommendations on Violence Against Women Act grant recipients to the Criminal Justice Council and the Domestic Violence Coordinating Council. If either the Criminal Justice Council or the Domestic Violence Coordinating Council approve the recommendations by a majority vote, the recommendations shall be forwarded to the Governor for

his consideration. If neither the Criminal Justice Council nor the Domestic Violence Coordinating Council approve the Committee's recommendations, they shall be returned to the Committee for modification".

Approved this 1st day of December, 1999.

Thomas R. Carper, Governor

Attest:

Edward Freel, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER SEVENTY-ONE**

TO: HEADS OF ALL STATE DEPARTMENTS,
AGENCIES AND AUTHORITIES, AND ALL
POLITICAL SUBDIVISIONS AND
GOVERNMENTAL UNITS OF THE STATE OF
DELAWARE

RE: CREATING THE GOVERNOR'S BUILDING
AND TRADE COUNCIL

WHEREAS, the State of Delaware is committed to providing equal employment opportunities to all Delawareans;

WHEREAS, the State of Delaware is committed to maintaining a high quality workforce that draws upon the talents of our diverse citizens to participate in the state's economy;

WHEREAS, the building and construction trade organizations are engaged in efforts to recruit, hire and promote qualified women and minorities in the industry;

WHEREAS, the State of Delaware has a comprehensive building and construction apprenticeship and training program operated by the state Department of Labor and financially supports building and construction education programs in the New Castle County Vocational School District, Polytech School District, Sussex County Vocational School District and the Delaware Technical and Community College;

WHEREAS, despite these efforts, much remains to be accomplished in striving for a workforce that reflects the diversity of the state's population and labor market;

WHEREAS, the State of Delaware is committed to fostering the creation, growth and success of women and minority construction firms and professional service firms related to the construction industry;

WHEREAS, the coordinated efforts of the public and private sectors are necessary to significantly increase the participation of qualified women and minorities in all aspects of the building and trade industry; and

WHEREAS, if the State of Delaware is to make real progress in improving the diversity of the workforce in the building and trade industry and increasing the number of women and minority construction and related personal service firms located and doing business in Delaware, it must establish and implement a practical and efficient outreach program that promotes sound recruitment, education and business support practices.

NOW, THEREFORE, I, Thomas R. Carper, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby order and declare the following:

1. The Governor's Building and Trade Council (hereinafter referred to as "Council") is hereby established. The charge of the Council shall be to develop a statewide recruitment and business support strategy to ensure that public and private initiatives are coordinated and focused so as to provide the support and assistance required to significantly increase the participation of qualified women and minorities in all aspects of the building and trade industry.

2. The Council shall be composed of the following:

- (i) Director of the Delaware Economic Development Office;
- (ii) Secretary of the Department of Labor;
- (iii) Secretary of the Department of Administrative Services;
- (iv) Secretary of the Department of Transportation;
- (v) A representative of the Office of the Mayor of the City of Wilmington;
- (vi) A representative of the Latin American Community Center;
- (vii) A representative of the Delaware Commission for Women;
- (viii) A representative of the Wilmington branch of the National Association for the Advancement of Colored People (N.A.A.C.P.);
- (ix) A representative of the urban league;

(x) A representative of the Interdenominational Ministries Action Council of Delaware; Inc.

(xi) A representative of the Delaware Contractors' Association;

(xii) A representative of the Association of Builders and Contractors;

(xiii) A representative of the Delaware Building and Trade Association; and,

(xiv) A representative of the Delaware Construction Council.

3. The Delaware Economic Development Office shall supply the following:

- (i) Staff support to the Council;
- (ii) Communicate and coordinate the implementation of the Council's recommendations across state agencies; and
- (iii) Coordinate the activities of state agencies with the private sector.

4. The Department of Administrative Services and the Department of Transportation shall strive, through its outreach efforts and coordination with the Council and private sector, to maximize the number of qualified minorities and women as a component of the total workforce during the course a public works project.

5. Each public works project administered by the Department of Administrative Services and the Department of Transportation shall, in accordance with applicable federal and state law, attempt to maximize the participation of women and minority construction and professional service firms during the course of the project.

6. The Council shall monitor the public works projects of the Department of Administrative Services and the Department of Transportation consistent with the goals of this Order.

Approved this 7th day of December, 1999.

Thomas R. Carper, Governor

Attest:

Edward Freel, Secretary of State

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Chiropractic	Mr. Bryan Errico	12/18/02
	Ms. Rebecca Gates	12/06/02
	Mr. Monroe W. Hearne	12/18/02
Board of Cosmetology & Barbering	Ms. Rene Brickman-Travis	12/06/02
Board of Dental Examiners	Mr. William H. Daisey	04/19/02
Council on Forestry	Mr. George A. Barczewski	03/19/00
Council on Volunteer Services	Ms. Bernice M. Edwards	12/06/01
	Mr. Brian M. McGlinchey	12/06/01
	Mr. Joseph V. Williams, Jr.	12/06/01
Developmental Disabilities Planning Council	Dr. Gary N. Mears	12/06/02
	Ms. Martha L. Toomey	12/06/02
Governor's Council on Agriculture	Ms. Robin Jestice	11/22/02
Governor's Council for Exceptional Citizens	Ms. Jan S. Drake	Pleasure of the Governor
	Ms. Linda M. Fleetwood	Pleasure of the Governor
	Ms. Nancy Panico-Smith	Pleasure of the Governor
Interagency Coordinating Council	Ms. Kay Holmes	12/06/02
State Board of Electrical Examiners	Mr. Donald M. King	12/06/02
State Board of Medical Practice	Dr. Garrett H. Colmorgen	11/22/02

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB01

April 12, 1999

The Honorable Thomas J. Cook
State Election Commissioner
Department of Elections
32 W. Loockerman Street
Dover, DE 19904

**RE: Request for Clarification of Att. Gen.
Op. 95-IB06 (January 27, 1995)**

Dear Mr. Cook:

You have asked this office to review and clarify its opinion issued on January 27, 1995 regarding the National Voter Registration Act ("NVRA") in light of particular provisions in the Act's legislative history. This opinion supercedes only those portions of our opinion of January 27, 1995 that are inconsistent herewith. See, Att. Gen. Op. 95-IB06 (January 27, 1995) (National Voter Registration Act of 1993). The portion of the legislative history which you requested to be reviewed stated that "a 'request' by a registrant would include actions that result in the registrant being registered at a new address, such as registering in another jurisdiction or providing a change of address notice through the driver's license process that updates the voter registration." House Comm. on House Administration, National Voter Registration Act of 1993, H. Rep. No. 103-9, 103d Cong., 1st Session, p. 14-15, Senate Comm. on Rules and Administration, Establishing National Voter Registration Procedures for Federal Elections, and For Other Purposes, S. Rep. No. 103-6, 103d Congress, 1st Session, p. 19 footnote.

In reviewing this language and the samples sent with your original opinion request, we believe that our advice regarding the handling of samples I through 6 and 9 remains the same. Samples 1, 2 & 3 are clearly requests from the registrant to be purged from the registration pursuant to 42 U.S.C. §1973gg-6(a)(3)(A). Samples 4, 5 and 6 appear to relate to applications for registration. However, as there is no indication that the application *resulted in* a registration in another jurisdiction, the procedures outlined in the NVRA should be followed. 42 U.S.C. § 1973 gg-6(c) & (d). As for sample 9, where the source of the information is not clear, the steps to verify a change in registration, as outlined in the NVRA, should be followed. 42 U.S.C. § 1973 gg-6(c) & (d).

As for sample 8, the document's origin will be determinative. If the document was produced by another state's motor vehicle department for the purpose of "providing a change of address notice through the driver's

license process that updates the voter registration", then the form would be acceptable. If the form was not so generated, it would be a notification of a change of address for which there is a clear procedure to be carried out before purging the registration. 42 U.S.C. §1973gg-6(d). The form presented for our review does not indicate whether it was generated through a driver's license process that updates voter registration. Without that information, it would be advisable to follow the procedures provided by the statute before purging.

Finally, we do find that, in light of the legislative history, sample 7 would be an acceptable method of notification for the purpose of purging the registration. Sample 7, which clearly states that the person has registered in another jurisdiction, should be considered a "request" as it was an action resulting in registration in another jurisdiction. Therefore, you should purge that person from the Delaware voter registration pursuant to 42 U.S.C. §1973gg-6(a)(3)(A).

If you have any further questions, please contact us.

Very truly yours,
Malcolm S. Cobin, Assistant State Solicitor

APPROVED:
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB02

April 16, 1999

Mrs. Charlotte Houben
745 West 11th Street
New Castle, DE 19720

**Re: Freedom of Information Act Complaint Against
City of New Castle**

Dear Mrs. Houben:

By letter dated February 15, 1999 (received by this Office on February 18, 1999), you alleged that the City of New Castle had denied your request to copy a consultant's report on the management and operational efficiency of the New Castle City Police Department. The issue is whether this document is a 'public record' as defined by the Delaware Freedom of Information Act ("FOIA").

By letter dated February 25, 1999, we asked the City to respond to your complaint within ten days. Because of other scheduling commitments, the City Solicitor asked for an extension of time until March 15, 1999 to respond to your complaint, which we granted.

In its letter of March 15, 1999, the City acknowledges that it denied your request for a copy of the report, but did send to you, under cover of letter dated February 25, 1999, a copy of the General Findings from the report. The City claims that the report is not subject to disclosure under FOIA because it is a 'personnel file . . . the disclosure of which would constitute an invasion of personal privacy. " 29 Del. C. Section 10002(d)1). The City also relies on the FOIA exception for records 'exempted from public disclosure by statute or common law.'" Section 10002(d)(6). See The News Journal Co. v. Billingsley, Del. Ch., 1980 WL 22024 (Nov. 20, 1980) (Hartnett, V.C.) (recognizing a common law right of informational privacy).

According to the City, the report consists of a synopsis of summaries of interviews with police officers. As reflected in the General Findings, the police officers were asked to speak candidly about various areas of law enforcement, including the fair administration of discipline and morale.

We do not agree with the City that the report falls within the 'personnel file' exception to FOIA. Even the City admits that the report 'does not constitute a formal personnel file.' We agree, however, that the common law right of privacy in this case outweighs the public's right to know. If the anonymity and testimony of the police officer witnesses were not protected, "[t]he result would be that few individuals would come forth to embroil themselves in controversy or possible recrimination" Billingsley, supra at p. 2. We also find that the report cannot be meaningfully redacted. "[W]hen protected information is inextricably intertwined with the rest of the record, it is appropriate to withhold the entire record." State ex rel. Martin v. City of Cleveland, Ohio App., 1992 WL 2861, at p. 2 (Jan. 8, 1992).

Your complaint questions whether the City followed appropriate procedures in commissioning the consultant's report. That is a matter of municipal law which is outside the jurisdiction of this Office. You also ask whether the City can 'refuse to advise its citizens of the cost of such an action?' You do not allege that you have asked to inspect and copy any public records which might reflect the cost of the consultant's report. If they exist and are not otherwise privileged, then they may be subject to FOIA, but we do not take a position on that issue at this time.

For the foregoing reasons, we conclude that the City of New Castle did not violate the public records requirements of FOIA.

Very truly yours,

W. Michael Tupman, Deputy Attorney General

APPROVED:

Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB03

April 28, 1999

Ms. Amy Garrison
510 Candlelight Lane
Bethany Beach, DE 19930

**Re: Freedom of Information Act Complaint Against
Town of Bethany Beach**

Dear Ms. Garrison:

By letter dated February 23, 1999 (received by this Office on March 2, 1999), you complained that the Town of Bethany Beach ('the Town') had violated the Delaware Freedom of Information Act, 29 Del. C. Sections 10001-10005 ("FOIA"). Specifically, you alleged: (1) the Town Council met in executive sessions on January 12, January 15, and February 19, 1999 for purposes not authorized by law; and (2) the Town did not give the required notice of a special meeting held on February 19, 1999.

By letter dated March 11, 1999, we asked the Town to respond to your complaint within ten days. Because the Town Manager was recovering from an illness, we granted the Town's request for an extension of time until March 26, 1999.

The Town Council held a special meeting on January 12, 1999. The agenda stated that the Town will discuss 'the possibility of contracting, with an outside vendor, for the complete collection of all residential trash' and 'personnel matters relating to annual evaluation' of the Town Manager. After hearing from members of the public about trash removal, the Town Council voted to go into executive session. The minutes of the executive session, which we have reviewed confidentially, show that the Council discussed the Town Manager's job performance evaluation. FOIA provides that a public body can go into executive session for "[p]ersonnel matters in which the names, competency and abilities of individual employees ... are discussed." 29 Del.C. Section 10004(b)(9). The Council therefore met in executive session for a purpose authorized by law.

The Town Council held its regular monthly meeting on January 15, 1999. The noticed agenda stated that the Council would "[c]onsider a motion to go into Executive Session to discuss personnel matters relating to names, competency and abilities of individual employees." After discussing other matters of public business, the Council voted to go into executive session to discuss personnel matters. The minutes of that executive session, which we have reviewed confidentially, show that the Council

discussed the Town Manager's job performance evaluation. The Council therefore met in executive session for a purpose authorized by law.

The Town Council held a special meeting at 6:30 p.m. on February 19, 1999 (which preceded the regularly scheduled meeting at 7:30 p.m.). The notice and agenda were posted on February 17, 1999. As a general rule, FOIA requires at least seven days' notice of a meeting of a public body, but a special meeting may be held on 24 hours' notice. See 29 Del. C. Section 10004(e)(3). "The public notice of a special or rescheduled meeting shall include an explanation as to why the [seven days'] notice required by paragraph (1) of this subsection could not be given." Id. The notice of the February 19, 1999 special meeting did not explain why seven days' notice could not be given.

The agenda for the regular monthly meeting on February 19, 1999 stated that the Town Council will "[c]onsider a motion to go into Executive Session to discuss personnel matters relating to names, competency and abilities of individual employees." At the regular monthly meeting on February 19, 1999, the Town Council voted to go into executive session to discuss personnel matters. The minutes of that executive session, which we have reviewed confidentially, show that the Council went into executive session for a purpose authorized by law.

For the foregoing reasons, we conclude that the Town Council met in executive session at its meetings on January 12, January 15, and February 19, 1999 for purposes authorized by FOIA. We find that the Town gave timely notice of the special meeting on February 19, 1999, but violated FOIA by not explaining why it could not give seven days' notice to the public. We also find that the notice of the special meeting on February 19, 1999 was deficient because it stated that the Town Council will meet in executive session to discuss personnel matters, when in fact the Council met to discuss new hires.

You claim that the notice should have disclosed more specifically what the Town Council intended to discuss in executive session at the special meeting on February 19, 1999 (the hiring of Mr. Hudson as the new Town Manager). This Office has determined that "it is not necessary to identify the personnel in convening an executive session to consider personnel matters." Att'y Gen.Op. 96-IB27 (Aug. 1, 1996) (quoting Nageotte v. Board of Supervisors of King George County, Va., Supr., 288 So.2d 423, 426 (1982)). Similarly, we do not believe that FOIA required the Town to disclose in the agenda the name or names of applicants for a job. For sound public policy reasons, job applicants have a right of privacy to information disclosed during the application process, at least until they are hired.

[D]isclosure may embarrass or harm applicants who failed to get a job. Their present employers, co-workers, and prospective employers, should

they seek new work, may learn that other people were deemed better qualified for a competitive appointment.

Core v. United States, 730 F.2d 946, 949 (4th Cir. 1984). See also Arizona Board of Regents v. Phoenix Newspapers, Inc., Ariz. Supr., 806 P.2d 348, 352 (1991) (en banc) (publicity attendant to a job search may result 'in lesser qualified' applicants and 'chill the attraction of the best possible candidates for the position').

We do not think that remediation is necessary or appropriate for the two deficiencies in the notice of the February 19, 1999 special meeting. Even if the Town had posted the notice seven days in advance and stated that the Town Council will go into executive session to discuss hiring a new Town Manager, under FOIA the Council still could have met in executive session. To direct them to meet again in executive session would not change the result: the unanimous vote by the Council, at a meeting properly noticed to the public, to hire a new Town Manager.

You state in your letter that the Town should have 'advertised the position opening' for Town Manager, and you question Mr. Hudson's qualifications. We take no position on either of those two issues. The first is a matter of municipal law, which is outside the jurisdiction of our Office. The wisdom of selecting a Town Manager is to be judged by the political process. We only hold that the process did not violate FOIA except in two respects which do not warrant remediation. The Town is cautioned, however, to ensure accuracy in its agenda and the minutes to avoid confusion as to the nature of the business to be conducted or acted upon, and to fully comply with FOIA notice requirements in the future.

Very truly yours,

W. Michael Tupman, Deputy Attorney General

APPROVED:

Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB04

May 5, 1999

The Honorable Brian J. Bushweller
Department of Public Safety
P. O. Box 818
Dover, Delaware 19903-0818

**Re: State Emergency Response Commission
Legal Opinion**

Dear Secretary Bushweller:

You have asked for an Attorney General's Opinion addressing the following questions: I Do federal and state law and regulations permit a Local Emergency Planning Committee ("LEPC") to incorporate as a private entity governed by its own charter and by-laws?

1. Do federal and state law and regulations permit a local Emergency Planning Committee ("LEPC") to incorporate as a private entity governed by its own charter and by-laws?

2. Would a privately incorporated entity still be subject to State Emergency Response Commission ("SERC") control as required by federal regulations and state law?

3. If an LEPC incorporated as a private entity, would it still enjoy exemptions from civil liability and would it still be entitled to receive state funding?

BACKGROUND

In order to appreciate the complex federal, state and local partnership forged by the Emergency Planning and Community Right-to-Know Act, (EPCRA), 42 U.S.C. §11001 et seq., it is necessary to review some background. The Superfund Amendments and Reauthorization Act (SARA) of 1986 adopted a new Title III -to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), known as the Emergency Planning and Community Right-to-Know Act.¹ EPCRA stands on its own as a statute designed to protect the public in the event of emergencies caused by hazardous substances. In general, it imposes obligations on state and local governments to develop plans and organize groups capable of responding to such emergencies.²

Historically, emergency planning and the regulation of public nuisances have been functions of local and state governments. EPCRA is a major step toward a federal role in areas previously regulated by state and local governments. As its name implies, EPCRA has two major themes: emergency planning and community right-to-know. The emergency planning portion requires local communities to prepare plans for dealing with an emergency relating to hazardous materials. Importantly, EPCRA does not mandate particular methods of emergency planning rather, it provides the tools for local governments and members of the community to make their own decisions regarding hazardous materials in their communities. Essentially, EPCRA shifts

information from business and other industrial facilities to governments and individuals. Section 301 of EPCRA established two planning levels within each state. The Governor of each state was required to appoint a State Emergency Response Commission ("SERC") by April 17, 1987. 42 U.S.C. §11001(a). The SERC, in turn, was required to appoint members of Local Emergency Planning Committees ("LEPC") 42 U.S.C. §11001(a),(c).

The state emergency response commissions are composed of individuals with technical expertise in emergency response. In response to EPCRA, Delaware's General Assembly enacted 9 Del. C. § 8226, giving the SERC a statutorily created status. Among the duties of the Commission is the designation of emergency planning districts and appointment of local emergency planning CY committees for each emergency planning district. The Commission must supervise and coordinate the activities of the local committees. 42 U.S.C. § I 1001(a); 29 Del. C. § 8226(d).

A state emergency response commission may revise its designations and appointments to emergency planning districts and emergency planning committees as it deems appropriate. Interested persons may petition the state emergency response commission to modify the membership of a local emergency planning committee. 42 U.S.C. §11001(d).

DISCUSSION

1. No. Federal and state laws do not expressly dictate the organizational form of an LEPC and thus do not expressly prohibit the incorporation of a LEPC. The federal and state law read together in light of their express purposes, however, strongly suggest the conclusion that creation of a "private entity governed by its own charter and bylaws" would be inconsistent with several parts of EPCRA. First, the federal law provides that each SERC has the responsibility to "supervise and coordinate the activities of [the LEPCs]." 42 U.S.C. §11001(a). This duty is inconsistent with the concept of the LEPC as either an independent body or a nongovernmental agency. The SERC's duty to supervise and coordinate would be undermined absent the accountability inherent in the governmental hierarchy scheme. Second, the General Assembly has acknowledged by statute that the SERC will "regulate." (Section 8226(b) provides that the SERC may adopt regulations to carry out the purposes of the Act.). Any attempt to create independent status for the LEPCs would potentially violate the Supremacy Clause because of the SERC's responsibility to "supervise and coordinate." The emergency response commission that EPCRA orders governors to create has numerous obligations and powers. 42 U.S.C. §11001(a). As noted above, the commission thus created, is further required to create and supervise local

1. 42 U.S.C. §§ 11001-11050.

2. Id. §§ 11001-11005

emergency planning committees that have yet broader duties. 42 U.S.C. §1101(b), (c). The LEPCs are required to prepare comprehensive plans for emergencies. This planning process imposes several key obligations on industry. For example, each company subject to the Act must appoint an emergency coordinator (§ 11003(a)) and notify the SERC that it is subject to EPCRA requirements (§11002(c)). Companies must also notify the SERC and LEPC when a chemical is released into the environment in amounts that exceed threshold planning quantities. (§11004). In this context, it is difficult to avoid the conclusion that the commission and the committees are envisioned to be state regulatory agencies empowered and limited by longstanding constitutional law principles.¹

The SERC and the LEPCs have considerable power to alter the legal rights and duties of facilities covered by EPCRA. This power to alter the legal rights and duties of facilities covered by EPCRA constitutes law making. See Immigration Service v. Chadha, 462 U.S. 919, 952 (1983) (defining lawmaking as "altering the legal rights, duties and relations of persons").

The provision authorizing interested persons to petition the state emergency response commission, to modify the membership of a local emergency planning committee would be frustrated or nullified if the LEPC attained independent status. There is nothing that prevents the NCCLEPC, however, from availing itself to the invitation contained in Section 11001(d) to "petition the [SERC] to modify the membership of the [LEPC]."

2. Yes. EPCRA creates an unambiguous SERC duty to supervise and coordinate the activities of the local committees. 42 U.S.C. §11001(a).

3. Yes. The Hazardous Materials Transportation Act of 1979, 29 Del.C. §§8223-8230, contains its own exemption from liability provisions according to its terms. 29 Del.C. §§8230, 8232. It appears that an LEPC incorporated as a privately incorporated entity would remain eligible to receive state funds.

Should you have any questions or comments, please do not hesitate to contact this office.

Very truly yours,

Kevin M. Maloney, Deputy Attorney General
Approved: Michael J. Rich, State Solicitor

1. In fact, by ordering governors to create and fund state regulatory agencies, a function traditionally vested in the state legislature, one could argue that EPCRA forces the executive branch to exercise legislative powers in violation of basic state separation of powers principles.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB05

May 12, 1999

Ms. Amy Garrison
510 Candlelight Lane
Bethany Beach, DE 19930

**Re: Freedom of Information Act Complaint Against
Town of Bethany Beach**

Dear Ms. Garrison:

By letter dated April 22, 1999 (received by this Office on April 26, 1999), you complained that the Town of Bethany Beach ("the Town") had violated the Delaware Freedom of Information Act, 29 Del.C. Sections 10001-10005 ("FOIA"), by failing to give notice that it would discuss the hiring of a new police officer at its March 19, 1999 meeting.

We asked the Town to respond to your complaint, and received their letter dated May 6, 1999.

Listed in the notice and agenda for the March 19, 1999 meeting was "Executive Session to discuss personnel matters relating to names, competency and abilities of individual employees." The minutes of the executive session, which we have reviewed confidentially, show that the Council discussed an applicant's qualifications for a police officer position, which became available after the Council decided to hire Mr. Hudson as the new Town Manager. The Council was authorized by law to go into executive session to discuss this matter. As we explained in our letter to you of April 28, 1999, FOIA does not require an agenda to identify the personnel in convening an executive session to consider personnel matters.

You raise a number of other legal issues in your letter: (1) did the Town violate municipal law because the Town Manager did not advertise for the new police position and then make a recommendation to the Council?; (2) did the Council violate municipal law in calling a special meeting in March 1999?; (3) did the Town engage in "favoritism" in hiring the new police officer?" As we explained to you in our letter dated April 28, 1999, our review is limited solely to issues enumerated in the Freedom of Information Act. Municipal legal and political issues which may result from the acts or omissions of a public body are beyond our jurisdiction and we must respectfully suggest that you consult with private legal counsel on how to best address those concerns.

For the foregoing reasons, we determine that the Town did not violate the notice requirements of FOIA in connection with the meeting on March 19, 1999.

Very truly yours,

W. Michael Tupman, Deputy Attorney General

APPROVED:

Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB06

June 2, 1999

The Honorable Joseph E. Miro
State Representative
Legislative Hall
Dover, DE 19901

**Re: Durational Residency Requirement for
 New Castle County Council**

Dear Representative Miro:

On your behalf, House Attorney Ronald D. Smith has asked for an opinion regarding the constitutionality of House Bill 67. House Bill 67 would clarify 9 Del. C. § 1142 by requiring that a candidate for New Castle County Council have resided in the councilmanic district to which he/she seeks election for one year prior to such election. In the event of redistricting, it would require that the candidate have resided in the new redistricted councilmanic district for one year prior to the election. The issue is whether this one year durational residency requirement withstands constitutional scrutiny. For the reasons set forth below, we conclude that it does.

The United States Supreme Court has never issued an opinion on the constitutionality of durational residency requirements for candidates for elective office. However, in two summary affirmances during the early 1970's, it upheld two seven year durational residency requirements for statewide offices contained in the Constitution of New Hampshire. Chimento v. Stark, 353 F. Supp. 1211 (D.N.H. 1973), *aff'd* 414 U.S. 802 (1973); Sununu v. Stark, 383 F. Supp. 1287 (D.N.H. 1974), *aff'd* 420 U.S. 958 (1975). Because they were issued summarily, these decisions cannot be read as approval of the New Hampshire District Court's reasoning, but they do constitute an endorsement of the decisions. Hicks v. Miranda, 422 U.S. 332 (1974). The affirmances contain findings on issues necessarily decided by the affirmances. Metromedia Inc. v. San Diego, 453 U.S. 490 (1981). A finding that some durational residency requirements are constitutional was essential to these

affirmances. The office at issue here is a local office, and the durational residency requirement at issue would be contained in a Delaware statute, not the Delaware Constitution. Nonetheless, we believe that these United States Supreme Court affirmances suggest that House Bill 67 passes constitutional muster. No case law from Delaware dictates otherwise.

Two Delaware cases address the constitutionality of durational residency requirements. Walker v. Yucht, 352 F. Supp. 85 (D.Del. 1972) upheld a three year residency requirement for a candidate for state representative, a requirement contained in the Delaware Constitution. The District Court employed a rational basis test to analyze the residency requirement. That is, the District Court ruled that the durational residency requirement was rationally related to legitimate government goals. *Id.* at 98. One year later, the Court of Appeals for the Third Circuit in Wellford v. Battaglia, 343 F. Supp. 143 (D.Del. 1972), *aff'd* 485 F.2d 1151 (3d Cir. 1973) (per curiam) struck down a five year durational residency requirement for the Mayor of the City of Wilmington using the strict scrutiny standard of review. The Court ruled that the State of Delaware could advance no compelling state interest to justify a five year residency requirement for a city mayoral candidate. *Id.* at 1152. The Court of Appeals for the Third Circuit distinguished Wellford from Walker v. Yucht based on the length of the residency requirement and the smaller territorial limits of the City of Wilmington. House Bill 67 imposes an even shorter durational residency requirement for election to a territorial unit that is larger than the City of Wilmington but smaller than the state House of Representatives. The facts of Walker v. Yucht more closely parallel the situation created by House Bill 67 than those of Wellford. Moreover, while Wellford has never been overruled, the United States Supreme Court affirmances cited above may undermine the reasoning and holding of the Wellford decision. Therefore, we have reviewed court decisions from other states that address the constitutionality of one year durational residency requirements. Our research shows that courts of other states resolving challenges to durational residency requirements of one year may differ as to analysis, but agree as to result, which is to reject the challenge.

The analyses by courts addressing the constitutionality of durational residency requirements are varied. Most often, perhaps, courts engage in an equal protection analysis. Some courts analyze the issue as a constitutionally protected right to travel issue. Others view the issue as implicating the right to vote. Finally, some courts perform a First Amendment analysis, based on the freedom to associate. *See* 65 ALR 3d 1048. The majority of courts appear to apply a strict scrutiny test, but there are courts that scrutinize -for a rational basis or an important governmental interest instead. Akron v. Beil, 660 F.2d 166 (6th Cir. 1981) (important governmental interest); Hankins v. Hawaii, 639 F. Supp.

1552 (D.Ha. 1986) (rational basis). Regardless of the specific analysis, however, most courts rule in favor of the constitutionality of one year durational residency requirements, whether the public office at issue is state or local, or the requirement is contained in a statute or a constitution. See 65 ALR 3d 1048 (collecting cases). The majority of courts rule that a government's interest in limiting the ballot to candidates familiar with the constituency of the governmental unit is adequate justification to support a one year durational residency requirement. We believe that a Delaware court ruling on a challenge to House Bill 67 would reach a like result.

Please do not hesitate to contact us if you would like additional assistance with this issue.

Very truly yours,

Malcolm S. Cobin, Assistant State Solicitor

A. Ann Woolfolk, Deputy Attorney General

APPROVED:

Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB07

8 June 1999

The Honorable Edward J. Freel
Secretary of State
Department of State
401 Federal Street, Suite 3
Dover, Delaware 19901

**Re: Whether Driving Under the Influence Offenses
May Be Pardoned**

Dear Secretary Freel:

You have asked for an Opinion of the Attorney General on the question of whether a first or second offense for driving under the influence can be subject to a pardon. For the reasons stated below, we conclude that applications for pardons of such offenses may be considered by the Board of Pardons.

Driving under the influence of alcohol or drugs ("DUI") is prohibited by 21 *Del.C.* § 4177. As your letter notes, over the years, the Board has felt that offenses under Title 21 (the Motor Vehicle Code) should be considered motor vehicle "violations" rather than crimes and not subject to the pardon

process. However, a careful review of the relevant statutes indicates that a first or second DUI offense is a misdemeanor, which is a crime which may be pardoned under appropriate circumstances.

Initially, it should be noted that Delaware law appears to include a "violation" under its definition of a "crime." Eleven *Del. C.* § 233 provides:

(a) "Crime" or "offense" means an act or omission forbidden by a statute of this State and punishable upon conviction by:

- (1) Imprisonment; or
- (2) Fine; or
- (3) Removal from office; or
- (4) Disqualification to hold any office of trust, honor or profit under the State; or
- (5) Other penal discipline.

(c) An offense is either a felony, a misdemeanor or a violation. Any offense not specifically designated by law to be a felony or a violation is a misdemeanor.

However, "violations" are not generally considered to be as serious as misdemeanors or felonies. For example, *Black's Law Dictionary* states:

"Crime" and "misdemeanor," properly speaking, are synonymous terms; ... In general, violation of an ordinance is not a crime. *Black's Law Dictionary*, 6th Ed., p. 370.

Regardless of whether a violation may be considered a crime under Delaware law, we conclude that a first or second DUI offense is a misdemeanor. As such, it is clearly a crime for which a pardon may be sought.

We reach this conclusion from a review of Delaware law. Under the provisions of 11 *Del.C.* §233, as noted above, 'no offense is a violation unless expressly declared to be a violation in this criminal code or in the statute defining the offense.'

The Motor Vehicle Code, which contains the DUI statute, provides: "Unless otherwise declared in this Chapter with respect to particular offenses, it is a misdemeanor for a person to do any act forbidden or fail to perform any act required in this Chapter." 21 *Del.C.* § 4102. Therefore, an offense of driving under the influence is a misdemeanor unless specifically declared to be a violation.

The driving under the influence statute, 21 *Del.C.* § 4177 *et seq.*, does not specifically define a first or second DUI offense as a violation. The statute does provide that a third DUI offense within five (5) years of the first two offenses, or a fourth DUI offense in a lifetime, is to be considered a felony. Since 21 *Del.C.* § 4102 provides that

any offense is a misdemeanor unless specifically declared otherwise, a first or second DUI offense is a misdemeanor.

This conclusion is supported by the sentences provided typically for violations and for DUI offenses. Under 11 *Del.C.* § 4207, calling for sentences for violations, the statute provides that the Court may impose a fine up to \$345.00 for the first offense of any violation, up to \$690.00 for the second offense of that same violation and up to \$1,150.00 for the third offense.

Twenty-one *Del.C.* § 4177(d) governs the punishment for driving under the influence offenses. A first offense is punishable by a fine between \$230.00 and \$1,150.00, and/or imprisonment between sixty (60) days and six (6) months, and mandatory attendance at classes. A second offense is punishable by a fine between \$575.00 and \$2,300.00, and imprisonment for between sixty (60) days and eighteen (18) months. Therefore, the punishment provided for a first and second DUI offense is greater than the punishment mandated for a violation in 11 *Del.C.* § 4207.

Therefore, we conclude that a first or a second DUI offense is a misdemeanor and clearly may be the subject of a pardon under appropriate circumstances.

Another issue to consider is the potential effect of a pardon of a DUI conviction if the offender subsequently commits additional DUI offenses. Under 21 *Del.C.* § 4177, as noted above, a third DUI conviction within five (5) years or a fourth DUI conviction in a person's lifetime, is a felony. The question thus arises whether a pardon of a previous DUI conviction would mean that the Court could not consider that offense in a subsequent prosecution for driving under the influence. In *State v. Robinson*, Del.Supr., 251 A.2d 552 (1969), the Delaware Supreme Court ruled that it is the "generally prevailing rule that the pardon of a conviction does not preclude the conviction from being considered as a prior offense under a statute increasing the punishment for a subsequent offense." The Delaware Supreme Court has also noted in *State v. Skinner*, Del.Supr., 632 A.2d 82 (1993) that a pardon involves forgiveness and not forgetfulness and does not wipe the slate clean for an offender. The fact of a pardon does not close the judicial eyes to the fact that at one time an offender had committed an act which constituted the offense. In addition, the United States Supreme Court has held that a pardon does not blot out the existence of guilt because there is a "confession of guilt implied in the acceptance of a pardon." *Burdick v. U. S.*, 236 U.S. 79 (1915).

Thus, an individual's prior DUI conviction may be considered in determining a sentence for a subsequent offense even if the person has received a pardon for the earlier offense. This is in accord with a recent decision of the South Carolina Court of Appeals, which held that a pardoned conviction for driving under the influence can be considered as a prior offense under a statute which enhances punishment for a subsequent conviction. *State v. Baucom*, 199 WL72440 (1999).

If you have any further questions concerning this matter, please feel free to contact this office.

Very truly yours,

Robert W. Willard, Deputy Attorney General

Approved:

Michael J. Rich, State Solicitor

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB08**

June 9, 1999

Mrs. Weldon Leventry
221 Megan Court
Newark, DE 19702

**Re: Freedom of Information Act Complaint Against
Christina School District**

Dear Mrs. Leventry:

By letter dated April 17, 1999 (received by this Office on April 23, 1999), you complained that the Christina School District ("the School District") had violated the Delaware Freedom of Information Act, 29 *Del.C.* Sections 10001-10005 ("FOIA"), by charging you for the costs of retrieving and copying public records you requested before the School District issued its administrative procedures governing costs.

By letter dated April 30, 1999, we asked the School District to respond to your complaint within ten days. By letter dated May 5, 1999 (received by this Office on May 11, 1999) we received their response enclosing a copy of the School District's "Administrative Procedure - Freedom of Information Act. The School District sent a copy of that Administrative Procedure to you under cover of letter dated April 29, 1999.

The FOIA Requests

By letter dated March 1, 1999, you asked the School District for copies of written policies "for the management of monies within the schools." By letter dated March 16, 1999, you renewed your request for copies of school policies. Your second letter apparently crossed in the mail with the School District's letter of March 15, 1999 enclosing "copies of District procedures as to the administration of internal funds in a school."

By letter dated March 2, 1999, you made a FOIA request for internal accounts for student parking stickers and

the Girl's Softball Team. By letter dated March 11, 1999, the School District provided you with internal accounts for the Girl's Softball Team (July 1, 1995 to present) and student parking stickers (July 1, 1997 to present).

By letter dated March 16, 1999, you made another FOIA request for "full detail of items" in the Fall Cheerleading account, the student parking account, and the softball account. Specifically, you requested "copies of invoices or receipts for the expenditures. For the deposit items, I would like to have an exact, detailed listing of the sources of the funds that were deposited. "

Mrs. Leventry was first aware of the particulars of the policy as a result of a letter to her from the District dated April 29, 1999. The District confirmed by telephone that the effective date of the policy was April 28, 1999.

By letter dated March 19, 1999, the School District advised that it had already provided you with "the written procedures for Internal Accounts which contain all of the policies governing such accounts. " As for your other FOIA request of March 16, 1999 (for more detailed financial information), the School District stated that " [a]ny future requests for information will be provided in accordance with [Section 10003 of FOIA].

On April 13, 1999, you wrote back to the School District, referencing your letter of March 16, 1999 (for more detailed financial information) and stating: "This is my second request under the Freedom of Information Act for those details. I expect the information by April 20.

By letter dated April 15, 1999, the School District responded saying that it was working to develop formal procedures for processing FOIA requests to charge for "the costs of employees' time and duplicating." The School District said that it would "forward a copy of [the new procedures] to you so that you are fully aware of any costs associated with your request. "

By letter dated April 17, 1999, you requested, for the third time, "access to and copy of details of deposits and/or invoices of expenditures for the cheerleading internal account and the parking account of Christiana High School. " You took the position that " [a]ny requests that you receive after your new policy is in place should be subject to that policy. Because I have been waiting for over a month for my request to be honored, I should not be subject to a policy that did not exist at the time of my first request "

By letter dated April 25, 1999, you made another FOIA request to the School District for:

- (1) The accompanying full detail of items in the Fall Cheerleading account;
- (2) A copy of the internal account for field trips as listed on the Fall Cheerleading internal account of 7/1/98 through 6/30/99; and
- (3) A copy of the internal account for the Class of 2000.

By letter dated April 27, 1999, the School District forwarded you copies of the financial activity reports for the internal accounts for the Cheerleading Account (1995 to present) and for the Parking Account (1995 to present). The School District advised you that "future requests under the Freedom of Information Act may require that, 'any reasonable expenses involved in the copying of such records shall be levied as a charge on the citizen requesting such copy' (Del. Code 29, Section 10003).

By letter dated April 29, 1999, the School District sent you a copy of the new Administrative Procedures for processing FOIA requests. The School District invited you to schedule a mutually agreeable time and place to inspect the financial files at the Christiana High School.

Applicable Law

Section 10003(a) of FOIA provides that "[a]ll public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body. " FOIA permits a public body to charge " [a]ny reasonable expense involved in the copying of such records" (id.), but "[i]t shall be the responsibility of the public body to establish such rules and regulations regarding access to public records as well as fees charged for copying of such records." Section 10003(b).

This Office has previously determined that where a public body has not promulgated a rule or regulation, it can charge only the actual cost of copying with no administrative surcharge. See Att'y Gen. Op. 95-IB08 (Feb. 6, 1995).

Legal Analysis

Although the School District can charge a reasonable amount to process a FOIA request, the administrative procedures it issued on April 28, 1999 govern only FOIA requests made after that date. Accordingly, the School District must make all public records that you asked for prior to April 28, 1999 available to you for inspection and copying without charge except for the direct photocopy costs as noted in our opinion 95-IB08 dated February 6, 1995.¹ These public records include the following:

All underlying documentation (receipts, deposits, and invoices) for the Fall Cheerleading account, the Parking account, and the Softball account (per your letter of March 16, 1999); and

Internal accounts and underlying documentation for

1. The imposition of direct photocopy costs may be waived the School District in its discretion.

Fall Cheerleading field trips and the Class of 2000
(per your letter of April 25, 1999).

Your FOIA complaint does not challenge any specific provision in the School District's administrative procedures for processing FOIA requests. We note, however, that paragraph 7 does not satisfy the requirements of Section 10003(b) because it does not provide for a uniform charge for the cost of retrieving information from computer databases. The District is urged to correct that defect to avoid a potential future finding that the policy is unenforceable in whole or in part because of that issue.

Conclusion

For the foregoing reasons, we determine that although the School District believed that it could postpone a response to your request pending its publication of a policy under 29 Del.C. 10003, its failure to provide you with the copies of public records that you requested in your letters of March 16 and April 25, 1999 violated the Freedom of Information Act. The School District's administrative policy for recouping the costs associated with FOIA requests applies only to requests made after April 28, 1999. It does not apply to any requests made prior to that date. We direct the School District to make the public records you requested available for your inspection and copying, without charge, except for direct photocopy charges within ten days of the date of this letter. We further direct the School District to report back to this Office in writing when it has complied with this direction.

Very truly yours,

W. Michael Tupman, Deputy Attorney General

APPROVED:

Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB08

June 23, 1999

Colonel Alan D. Ellingsworth
Department of Public Safety
Division of State Police
P.O. Box 430
Dover, DE 19903

RE: Constitutionality of 24 Del.C. §1341

Dear Colonel Ellingsworth:

In response to a potential claim, you have asked for an Attorney General's Opinion on the constitutionality of certain provisions of the Private Investigators and Private Security Agencies Act, specifically, 24 Del.C. §1341 ("§1341") which require licensees under the Act to maintain an office in the State of Delaware which is managed by a Delaware resident who is licensed pursuant to the Act.

It is our opinion that, as presently interpreted by the Delaware Board of Examiners of Private Investigators and Private Security Agencies (the "Board"), § 1341's requirement that licensees maintain an in-state office (the "in-state office requirement") will withstand constitutional challenge while the requirement that such office be managed by a Delaware resident ("the residency requirement") may not constitutionally be enforced for reasons which will be explained below.

A. Statutory Background

Under §1304, the Board determines the qualifications of security guards, private investigators, armored car employees and businesses licensed under the chapter. The Board has rule making and enforcement authority. *Id.* at §§ 1304, 1309, 1316.

Under §1341, licensees are required to maintain a Delaware office which is managed by a Delaware resident who is licensed under the Act but §1341 is silent on the operations to be conducted from that office. As presently interpreted and enforced by the Board, a licensee's Delaware office is not required to be fully staffed or open for business on any specified days and hours. The manager is not required to be present in the office or, for that matter, in Delaware, at any particular times. There is no requirement that the office be a fully functioning "place of business" or that any of the licensee's operations be conducted from it. Nor is there a prohibition against sharing office space with others. The Board merely requires that the necessary records regarding a licensee's Delaware operations be maintained and available for the Board's inspection at the licensee's Delaware office.

The Act and the regulations promulgated under it authorize and enable the Board to investigate the background of all applicants for licenses under the Act. They enable the Board to make random checks of licensees' records for compliance with the Board's detailed record-keeping requirements regarding job rosters, job assignments and compliance with training regulations. Inspections are also made to determine compliance with the liability insurance requirements as well as compliance with the Board's regulations as to licensees' uniforms, patches, badges, seals, and vehicular markings to ensure that such items do not confuse or mislead the public into believing that the licensee's employees are official law enforcement personnel

or are in any way affiliated with a government agency.

B. Delaware's Constitutional Authority to Regulate Private Investigators

1. General. The United States Supreme Court has recognized that "the States have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions." Gade v. National Solid Waste Management Association, 504 U.S. 85, 112 S. Ct. 2374, 2388 (1992) (citations omitted). State regulation of private investigators and private security agencies has long been recognized as a valid exercise of a state's police power. Lehon v. City of Atlanta, 242 U.S. 53, 37 S.Ct. 60 (1916) (State may use its police power to regulate the activities of private detectives doing business within its borders whether private detectives are citizens of regulating state or another state), Schulman v. Kelly N.J. Supr., 255 A.2d 250 (1969) ("the business of private detective has an inherent potential for abuse and...its strict regulation including control of those persons who desire to enter that business, is clearly within the public interest"), see also, Schauder v. Seiss, N.Y. Supr N.Y.S. 2d 317, aff'd N.Y. Ct. App. 94 N.Y.S. 2d 748 (1950), K-Mart Corporation v. St. Louis County, Mo.Ct.App., 672 S.W. 2d 127 (1989).

2. The Commerce Clause. The United States Constitution provides that "Congress shall have Power ... to regulate Commerce ... among the several States." U.S. Const. art. 1, § 8. Although the Commerce Clause speaks only to the power of Congress to regulate interstate commerce, the United States Supreme Court interprets the Clause to contain "an implied limitation on the power of the States to interfere with or impose burdens on Interstate Commerce." Western & Southern Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 648, 652, 101 S. Ct. 2070, 2074-75 (1981). This implied limitation is referred to as the "negative" or "dormant" Commerce Clause and will be at issue in any challenge to the Act.

The dormant Commerce Clause "prohibits economic protectionism - that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." New Energy Co. of Indiana v. Limbach, 486 U.S. 269, 273, 108 S. Ct. 1803, 1807 (1988). The test for conducting a dormant Commerce Clause analysis was first set forth in Pike v. Bruce Church, Inc., 397 U.S. 137, 90 S. Ct. 844 (1970):

Where the statute regulates evenhandedly to effectuate a legitimate local public interest and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the

putative local benefits If a legitimate local purpose is found, then the question becomes one of degree.

397 U.S. at 142, 90 S. Ct. at 847 (citation omitted).

The Supreme Court further clarified its Commerce Clause analysis in Brown-Forman Distillers Corp. v. New York Liquor Auth. 476 U.S. 573, 106 S. Ct. 2080 (1986). In Brown-Forman, the Supreme Court held that when a state statute "directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests," the statute generally may be invalidated without further inquiry. 476 U. S. at 578-79, 106 S. Ct. at 2084. When a statute provides even handed regulation and only indirectly affects interstate commerce determination must be made as to whether the State's regulatory scheme is "legitimate and whether the burden on interstate commerce clearly exceeds the local benefits." 476 U.S. at 579, 106 S. Ct. at 2084. The Court has also recognized "that there is no clear line separating the category of state regulation that is virtually per se invalid under the Commerce Clause and the category subject to the balancing approach" In both situations "the critical consideration is the overall effect of the statute on both local and interstate activity." Id. (citation omitted For the Pike balancing test to apply, a state's action must not be merely "facially neutral," but must also be neutral in effect. Statutes or regulations which are facially discriminatory but have an effect which favors "in-state economic interests over out-of-state interests" will be subject to heightened scrutiny. Id.

Applying the Pike test to § 1341, it is almost certain that the residency requirement will not survive a challenge under the Commerce Clause since the Delaware statute clearly favors in-state interests over out-of-state interests. This does not, however, end the inquiry with respect to the other challenged requirement of § 1341.

On its face, the in-state office requirement does not discriminate against out-of-state private investigators or private security agencies since all persons or entities who wish to operate a private security or private investigator business in Delaware must have a local office. Although all licensees must bear the financial cost of complying with the in-state office requirement and it might be less expensive for Delaware private security and private investigator firms to do so than out-of-state firms, such "incidental discrimination caused by the [in-state] office requirement is not based on residency status, but on the size and type of [the firm's] practice." Tolchin v. Supreme Court of the State of New Jersey, 3rd Cir., 111 F. 3d 1099, 1108 (1997) (upholding New Jersey's in-state office requirement for all attorneys practicing in New Jersey.) Under Third Circuit precedent,

the *only* incidental burdens on interstate commerce

that implicate the commerce clause. . . are those that discriminate against interstate commerce. We have so held because the commerce clause is concerned with protectionism and the need for uniformity, and case law demonstrates that legislation will not be invalidated under the Pike test unless it imposes *discriminatory* burdens on interstate commerce. ...Thus, where the burden on out-of-state interests rises no higher than that placed on competing in-state interests, it is a burden on *commerce* rather than a burden on *interstate* commerce.

Instructional Systems, Inc. v. Computer Curriculum Corp., 3rd Cir., 35 F. 3d 814, 826-827 (1994) (citations omitted) (italics in original).

Assuming that a multi-state private security company has a Delaware office and further assuming that such company asserts that the in-state office requirement imposes an unfair burden on the company because its small volume of business in this State, the Delaware statute does not violate the Commerce Clause. In Exxon Corp. v. Governor of Maryland, 417 U.S. 117, 98 S. Ct. 2207 (1978) the Court upheld a Maryland statute which provided that producers or refiners of petroleum products (1) could not operate any retail service stations within the state, and (2) required them to extend all price reductions uniformly to all Maryland service stations which they supplied. Although the Court found that certain refiners could, as a result of the statute in question, choose to withdraw from the Maryland market altogether, there was no evidence that the total quantity of petroleum products shipped into Maryland would be affected by the statute. "The fact that the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce." 437 U.S. at 126, 98 S. Ct. at 2214. Despite the refiners' claim that the statute interfered with the natural functioning of the interstate market through prohibition or burdensome regulation and alleged that the statute would change the market structure by weakening certain refiners, the Court refused to accept the "underlying notion that the Commerce Clause protects the particular structure or methods of operation in a retail market.... [T]he Clause protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations." 437 U.S. at 127-128, 98 S. Ct. at 2215. See also Ford Motor Co. v. Insurance Comm'r, 3rd Cir., 874 F.2 926, 94243, cert. denied, 493 U.S. 969, 110 S. Ct. 418 (1989) (Upholding statute prohibiting companies affiliated with savings and loan institutions anywhere in the U.S. from selling insurance in Pennsylvania; fact that a law may have "devastating economic consequences" on a particular interstate firm not sufficient to rise to a Commerce Clause violation). Thus, although a multi-state company may elect to stop operating

in Delaware because its small volume of business in Delaware may not justify the cost of complying with the in-state office requirement, the Commerce Clause would not necessarily be violated since other interstate security agencies or investigative firms would be free to take such company's market share upon compliance with the Act.

In analogous situations, three courts have upheld local office requirements affecting other businesses on Commerce Clause grounds while three other courts have struck down similar requirements; however, the Board's current interpretation and enforcement of the in-state office requirement would most likely survive a Commerce Clause challenge under all six of the analogous cases..

Those courts which have upheld local office requirements have done so after balancing their benefits to the regulating state against their burdens on interstate commerce. In Tolchin, the Third Circuit Court of Appeals upheld a New Jersey court rule which required all attorneys practicing in New Jersey to maintain a "bona fide office" in that state.

Two courts have upheld in-state office requirements applicable to debt collection agencies. Citing evidence of the use of abusive, deceptive and unfair debt collection practices by many debt collectors, the court in Dun & Bradstreet, Inc. v. McEldowney, D. Idaho, 564 F. Supp. 257 (1983) found a "sufficiently compelling state interest" in regulating such businesses to justify the Idaho statute's in-state office requirement. Id. at 263-64. It should be noted, however, that the McEldowney court refused to require Dun & Bradstreet to conduct all its Idaho debt collections activities from an in-state office and commented that such a requirement would be an impermissible burden on interstate commerce. Id.

Likewise, the Supreme Judicial Court of Massachusetts upheld a Massachusetts statute which required an out-of-state consumer debt collection agency which collected solely by interstate mail and telephone, to obtain a license from and maintain an office in Massachusetts. Commonwealth of Massachusetts v. Allied Bond and Collection Agency, Mass., 476 N.E. 2d, 95 5, appeal dismissed 474 U.S. 991, 106 S. Ct. 401 (1985) (dismissing appeal for lack of a substantial federal question). The statute in question required only that Allied Bond maintain an office in Massachusetts but imposed no requirements as to its size, location or the days and hours the office needed to be open. The court upheld the local office requirement because Allied Bond did not show that it involved the kind of economic protectionism or discrimination which unduly burdened interstate commerce. As interpreted and applied by Massachusetts, the requirement was imposed only to the extent necessary to permit government officials to carry out their regulatory obligations. In upholding the statute, the court noted that a requirement that a debt collection agency conduct business from an in-state office would probably be unconstitutional.

Id. at 614-15. Thus, the Board's interpretation and enforcement of the In-state office requirement would appear to satisfy the test of Allied Bond.

Three other courts, however, have struck down local office requirements for out-of-state licensees in various businesses. In Nutritional Support Services, LP v. Miller, N. D. Ga., 830 F. Supp. 625 (1993), the court struck down a Georgia statute which required suppliers of durable medical supplies to have a valid business license, an in-state business location or one located within fifty miles of the state boundary. The fifty mile limit created an unacceptable condition under the court's reading of the Commerce Clause.

In Georgia Association of Realtors v. Alabama Real Estate Commission, M.D. Ala., 748 F. Supp. 1487 (1990), the court struck down an Alabama statute which required a real estate broker to maintain a "place of business" in Alabama in order to do business in that state. A "place of business" was statutorily defined as an office from which a licensed real estate broker "operate[d]." Although the court noted that Alabama had a legitimate interest in conducting random unannounced audits of a realtor's records, it noted that Alabama could achieve the same goal by merely requiring the broker to maintain copies of records in the state which would be accessible to the Alabama Real Estate Commission. Since it appeared that there were less burdensome or discriminatory measures available than requiring the broker to maintain an Alabama "place of business," the court, relying on *Pike supra*, held that because the statute required business operations be performed in Alabama which could be performed more efficiently elsewhere, the statute was unconstitutional as violating the Commerce Clause. Id. at 1494.

In Underhill Associates, Inc. v. Coleman, E.D. Va., 504 F. Supp. 1147 (1981), the court struck down a Virginia statute which required securities dealers to register with Virginia's corporation commission and to maintain a full-time office or "place of business" in the state in order to register. Although the full-time office requirement applied to in-state and out-of-state brokers alike and was thus facially neutral, the court found that the regulation's "obvious effect [was] prejudicial to out-of-state brokers, who [were required to] duplicate the expense of maintaining an office in Virginia in order to do business with its residents." 504 F. Supp. at 1151. Delaware's statute does not require the maintenance of a full time office or that the company's business be transacted from the local office.

3. The Privileges and Immunities Clause. The Privileges and Immunities Clause provides that "Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, §2 "[O]ne of the privileges which the Clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State." Toomer v. Witsell, 334 U.S. 385, 396, 68 S. Ct. 1156, 1162.

(1948).

If §1341 is challenged on Privileges and Immunities grounds, the courts would apply an analysis similar to the above Commerce Clause analysis, *see e.g. Hicklin v. Orbeck*, 437 U.S. 518, 98 S. Ct. 2482 (1978), and ask (1) whether the in-state office requirement and the residency requirement discriminate against non-resident private investigators and private security agencies and (2) if so, is the imposition too heavy a burden on the privileges of such nonresidents which fails to bear a substantial relationship to Delaware's objective of regulating licensees? *See Barnard v. Thorstenn*, 489 U.S. 546,557, 109 S. Ct. 1294, 1301-02 (1989). In resolving these questions, the reviewing court will consider whether less restrictive means are available and must also distinguish between incidental discrimination against nonresidents and discrimination that imposes too heavy a burden on their privileges. Tolchin, 111 F. 3d at 1111-12. Third Circuit precedent also holds that a statute or regulation that imposes "identical requirements on residents and nonresidents alike and has no discriminatory effect on nonresidents ... does not violate the Privileges and Immunities Clause." Id. at 1111 (citation on-omitted).

As interpreted and enforced by the Board, the in-state office requirement requires both resident and nonresident licensees to maintain a local office but does not impose any requirements as to hours of operation, staffing, or the conduct of business therefrom while enabling the Board to perform its statutorily mandated regulatory functions. Thus, an individual licensee's challenge to the In-state office requirement is likely to fail since it does not impose a disproportionately heavy burden on nonresident licensees and bears a substantial relationship to regulating licensees for the protection of the public. Tolchin, 11 F. 3 d at 1113. A challenge to the residency requirement based on the Privileges and Immunities Clause would succeed since it plays no real role in enabling the Board to perform its regulatory functions while discriminating against nonresident licensees who otherwise meet the licensing requirements. Supreme Court of Virginia v. Friedman, 487 U.S. 59, 108 S. Ct. 2260 (1988). In Friedman, the Supreme Court invalidated, as a violation of the Privileges and Immunities Clause, a state court rule permitting admission to the Virginia bar simply on motion for attorneys who were licensed in other states and who had become state residents while still requiring nonresident attorneys to take the state bar exam. Id. 487 U.S. at 61, 108 S. Ct. at 2262. Because the discretionary admissions policy deprived nonresident attorneys the opportunity to practice law on substantially equal terms as resident attorneys, the Court concluded that the policy violated the Privileges and Immunities Clause. In so holding, the Court noted that Virginia's requirement that attorneys maintain in-state offices provided a less restrictive alternative to protect its regulatory interests. Id. *See also, Barnard v. Thorstenn*, 489 U.S. at 558-59, 109 S. Ct. 1302-

03 (U.S. Virgin Islands residency requirement for admission to bar violated Privileges and Immunities Clause as requirement did not bear a substantial relation to the District Court of the Virgin Islands' regulatory objectives)- Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 105 S. Ct. 1272 (1985) (invalidating, as a violation of the Privileges and Immunities Clause, state court rule limiting bar membership to state residents since residency requirement bore no rational relationship to asserted purposes of improving attorney availability, professional quality and ethical standards of state bar). The arguments asserted in support of the New Hampshire's residency requirement are very similar to those which can be asserted to support §1341's residency requirement; thus, the latter would likewise not be upheld against a Privileges and Immunities challenge.

The Supreme Court has also invalidated on Privileges and Immunities grounds an Alaska statute which contained a resident hiring preference for all employment related to the development of the state's oil and gas resources. Hicklin v. Orbeck, *supra*. Since the Residency requirement has little, if any, substantial relationship to the goal of regulating licensees for the protection of the public, it essentially constitutes a hiring preference for employment in the private security and private investigative industry in the State of Delaware and will be invalidated under the Hicklin rationale.

4. The Equal Protection Clause. A challenge under the Fourteenth Amendment's equal protection guarantees will also likely fail. Because the Act does not prevent out-of-state investigators or security agencies from doing business in Delaware based upon classifications which implicate fundamental rights¹ or which draw upon suspect distinctions such as race, religion or alienage, the Act must only meet the rational relationship test under the Equal Protection Clause.² The Act prevents only those who fail to comply with the Act's licensing requirements from doing business in Delaware. As a general matter, "economic and social legislation is subject to rational basis review, under which a law need only be 'rationally related to a legitimate state interest.'" Schumacher v. Nix, 3rd Cir., 965 F.2d 1262, 1266 (1992), quoting City of New Orleans v. Duke, 427 U.S. 297, 303, 96 S. Ct. 2513, 2516-17 (1976) (per curiam).

Under the rational basis standard, legislation will be

1. For equal protection purposes, "fundamental rights" include such constitutional rights as the right of interstate travel, Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322 (1969), the right to vote, Bullock v. Carter 405 U.S. 13 4, 92 S. Ct. 849 (1972), rights guaranteed by the First Amendment, Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5 (1968), and the right to procreate, Skinner v. Oklahoma, 316 U.S. 5 3 5, 62 S. Ct. II 10 (1942).

presumed to be valid and will be upheld if the classification drawn by the statute is rationally related to a legitimate state interest. City of Cleburne v. Cleburne Living Center, Inc. 473 U.S. 432, 440, 105 S. Ct. 3249, 3254 (1985). The statutory classification "need not be drawn so as to fit with precision the legitimate purposes animating it." Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 808-10, 96 S. Ct. 2488, 2496-98 (1976).

A challenge on equal protection grounds will have to establish that the classifications created by the Act, the in-state office requirement and the residency requirement, are so attenuated to their asserted purposes that the distinctions they draw are wholly arbitrary and irrational. City of Cleburne 473 U.S. at 446, 105 S. Ct. at 3257-58. A party challenging legislation on equal protection grounds must negate "every conceivable basis which might support it." FCC v. Beach Communications, Inc., 508 U.S. 307, 315, 113 S. Ct. 2096, 2102 (1993) (internal quotations omitted), Tolchin, 111 F.3d at 1114. These hurdles will obviously be very difficult, if not impossible, to overcome with respect to the in-state office requirement, which will most likely be upheld against a challenge based on the Equal Protection Clause.

5. The Due Process Clause. The Due Process Clause protects one from the deprivation of life, liberty or property without due process of law. U.S. Const. Amend. XIV. A challenge to the residency requirement will most likely be successful given the Court's interpretation of the Due Process Clause.

An out of state licensee will contend that it has a property interest in the license which it currently holds. Where an economic regulation is challenged under the Fourteenth Amendment on substantive due process grounds, the regulation will not be overturned as long as "there is an evil at hand for correction, and ... it might be thought that the particular legislative measure was a rational way to correct it." Williamson v. Lee Optical, 348 U.S. at 488, 75 S. Ct. at

2. It is settled that laws restricting access to specific types of private employment are subject to only rational basis review under the Equal Protection Clause. See, e.g., Leis v. Flynt, 439 U.S. 438, 444 N. 5, 99 S. Ct. 698, 701 N. 5 (1979) (practice of law); Schwartz v. Board of Bar Examiners 353 U.S. 232, 77 S. Ct. 752 (1957) (same)- Williamson v. Lee Optical of Oklahoma Inc. 348, U.S. 483, 75 S. Ct. 461 (1955) (fitting or duplicating eye glass lenses); Kotch v. Board of River Pilot Commissioners, 330 U.S. 552, 67 S. Ct. 910 (1947) (piloting of vessels); see also Edelstein v. Wilentz, 3d Cir., 812, F.2d 128, 132 (1987) (The Constitution does not create fundamental interests in particular types of employment); Tolchin 111 F.3d at 1114.

464. In subjecting a provision to the rational basis test, it has repeatedly been held that the Due Process Clause does not transform a reviewing court into a "super-legislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare." Daybrite Lighting, Inc. v. Missouri, 342 U.S. 421, 423, 72 S. Ct. 405,407 (1952), *See also*, Exxon Corp. v. Governor of Maryland, 437 U.S. at 124, 98 S. Ct. at 2212; Ferguson v. Skrupa 372 U.S. 726, 83 S. Ct. 1028 (1963). While there can be no legitimate dispute that Delaware may act to protect the public from unscrupulous or deceptive licensees in the private investigative or private security field, the means chosen to do so must be rationally related to that goal. Given the courts' tendency to uphold economic regulations which are rationally related to achieving the stated goal, a licensee will be unsuccessful in challenging the in-state office requirement since the stated goal of enabling the Board to have access to licensees' records, etc. is rationally related to it.

Arguably, the residency requirement could be defended on grounds that it will ensure or improve regulatory control over licensees by forcing them to become and remain familiar with the Act's requirements, to make them and their records more accessible to clients and the Board, and to strictly adhere to the Act's requirements and to the Board's regulations enacted pursuant to it. Nevertheless, we conclude that the residency requirement will likely be invalidated on due process grounds as it is not rationally related to the stated purpose of protecting the public. The question presented by a potential due process challenge to the Residency requirement is whether allowing only Delaware residents to manage a licensee's local office is rationally related to the goal of ensuring a licensee's compliance with the Act and the Board's regulations. Since there is no basis for asserting that a nonresident manager would be less conscientious or more likely to risk losing his or her livelihood through non-compliance with the Act, the foregoing question must be answered in the negative and the Residency requirement may not constitutionally be enforced.

C. Conclusion

Based on the foregoing analysis, it is the opinion of the Attorney General that: (1) the Board constitutionally may enforce the In-state office requirement of §1341 as that section is presently interpreted and enforced and (2) that the Board is constitutionally barred from attempting to enforce the residency requirement of §1341.

If you have any further questions about § 1341 or about this opinion, please do not hesitate to contact

Robert F. Phillips, Deputy Attorney General

APPROVED:

Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB10

June 25, 1999

The Honorable Colin R. J. Bonini
State of Delaware
Legislative Hall
Dover, DE 19901

Re: Local Disenfranchisement of Delinquent Taxpayers

Dear Senator Bonini:

You have asked for an opinion on the constitutionality of several town charter provisions which disenfranchise residents who are delinquent in their local taxes or assessments. For the reasons below, we conclude the provisions violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.¹

The Charter Restrictions

You identified five town charters which restrict the right to vote to residents who are current in their local obligations. The precise proscriptions and requirements differ in each charter. Section 4 of the Charter of the Town of Frederica limits voting in annual or special elections to residents who, among other qualifications, are not "delinquent in the payment of any taxes or other assessments levied by the Town." The pertinent restriction in the Town of Little Creek's charter is "a nondelinquent payer of taxes to the said Town..... Magnolia voters who are otherwise eligible "shall not be delinquent in the payment of any taxes assessed against such voter. " Middletown's charter requires a voter to "have paid a Town tax" within the year preceding the election and excludes anyone "who has been declared a delinquent" in that time. Finally, Section 6 of the Selbyville charter requires voters to have "paid all town taxes assessed against him or her.

Analysis

1. Standard of review under the Equal Protection Clause. Section 1 of the Fourteenth Amendment of the United

1. Given this conclusion, we do not address whether the charters violate other parts of the federal Constitution or violate the state Constitution.

States Constitution provides that [n]o State shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws." Generally, legislation is presumed valid and will survive equal protection challenge as long as the classification it creates is "rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). The presumption of validity yields when the challenged statute burdens either: (1) a "suspect" class of people; or (2) a fundamental constitutional right. *Id.* In these circumstances, the law will survive judicial review under the Equal Protection Clause only if it is "suitably tailored to serve a compelling state interest." *Id.*¹

2. Voting is a fundamental right.

The right to vote is fundamental. *Kramer v. Union Free School District*, 395 U.S. 621 (1969). It is "the citizen's link to his laws and government" and thus, protects "all fundamental rights and privileges." *Evans v. Cornman*, 398 U.S. 419, 422 (1970). Laws that unnecessarily burden the right to vote, or that unjustifiably discriminate "in determining who may participate in political affairs or in the selection of public officials undermine[] the legitimacy of a representative government." *Kramer*, 395 U.S. at 626. Since the franchise is a fundamental right, the charter provisions you questioned are subject to strict judicial scrutiny, the most exacting standard of constitutional review. To survive this level of scrutiny, the non-delinquency restrictions must be necessary to promote a compelling [governmental] interest. " *Id.* at 627. To be "necessary," the classification must be precisely drawn to achieve the government's goal and may not be either under or over inclusive. *Id.* at 632.

3. *Similar voting restrictions held to violate the Equal Protection Clause.*

The United States Supreme Court has not directly considered the non-delinquency requirement found in the Town Charters. However, it has reviewed and invalidated other franchise restrictions based on, or related to, taxation status. In each case, the government was unable to

1. Most of the cases cited in this Opinion involve *state* imposed restrictions on political participation. The same standards and reasoning apply to locally imposed limitations, since political subdivisions of the States "have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions." *Reynolds v. Sims*, 377 U.S. 533, 575 (1964). In short, it does not matter for purposes of judicial review that the restrictions you questioned appear in town charters rather than in the *Delaware Laws*.

demonstrate that the questioned classification advanced a compelling state interest.

In *Kramer, supra*, the Court struck down a law requiring voters in school board elections to own or lease taxable real property in the district or be parents or custodians of children enrolled in the local public schools. The Court assumed without deciding that the government had an interest in limiting the vote to people interested in school affairs. It concluded that the statutory limitations did not "accomplish this purpose with sufficient precision to justify denying appellant the franchise" because they excluded many people with a direct interest in school affairs while including many people with no identifiable interest. *Id.* at 632.

The Court has also invalidated a statute limiting the vote in local revenue bond elections to "property taxpayers" of the district, *Cipriano v. City of Houma*, 395 U.S. 701 (1969), and has struck down a requirement that voters in a general obligation bond election be "real property taxpayers." *City of Phoenix v. Kolodziejcki*, 399 U.S. 204 (1970). In these cases, the Court concluded that both tax payers and non-tax payers would be affected by the results of the election, in terms of the benefits provided and the obligations incurred, and thus, that the distinction drawn between them violated the Equal Protection Clause.

In *Hill v. Stone*, 421 U.S. 289 (1975), the Court considered a city charter provision which permitted only people who "rendered," or listed, property for taxation to vote in a bond election. The City argued that the rendering requirement helped enforce the tax laws by encouraging prospective voters to identify their property for assessment. The Court found that this asserted governmental interest fell "far short of meeting the 'compelling state interest test'" articulated in *Kramer, id.* at 300, and noted that the "use of the franchise to compel compliance with other, independent state objectives is questionable in any context." *Id.* at 299.

These cases illustrate the stringent judicial review applied to voting restrictions in general and the particular constitutional criticism leveled at laws connecting voter eligibility to taxation status. While not directly addressing the non-delinquency provisions you questioned, taken together, these cases suggest that the Town Charter provisions are constitutionally flawed.

4. Non-delinquency requirements for candidacy violate the Equal Protection Clause.

As noted, the right to vote is fundamental. The right to appear on the ballot is not. *Bullock v. Carter*, 405 U.S. 134 (1972); *Clements v. Fashing*, 457 U.S. 957, 963 (1982). As a result, restrictions imposed on candidates for elected office are not scrutinized for constitutional muster as closely as laws restricting the franchise. *Id.* See also *Opinion of the Attorney General*, No. 93F007 (November 16, 1993). Restrictions on ballot access are generally constitutional as long as they are rationally related to a legitimate

governmental purpose. *Id.* See also *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

Applying this deferential standard of constitutional review, the Third Circuit Court of Appeals *invalidated* a city charter provision requiring a candidate for an elected city office to be a " nondelinquent taxable" and freeholder of the city. *Deibler v. City of Rehoboth Beach*, 790 F.2d 328 (3rd Cir. 1986). The City asserted two grounds for the nondelinquency requirement. The first assertion was that the requirement screened out candidates who did not have a sufficient commitment to the community: city officials argued that people who did not pay taxes did not have the same concern for the community as those who did pay. The Third Circuit found this logic unpersuasive, noting that the decision to pay taxes "may rest solely on economic, ideological or other personal grounds." *Id.* at 335 ¹

The City also argued that the nondelinquency requirement advanced respect for the political system: electing an official who was delinquent in his tax obligation would generate public cynicism for local government. The Court concluded that this interest was not "rationally served" by the charter restriction because the restriction actually "denied voters the opportunity to establish standards for their representatives through the power of the ballot box." *Id.* at 336. The Court asked rhetorically, "Can there be respect for a system that summarily denies the privilege of elective office to those who, for reasons totally unrelated to their commitment to the community, do not pay taxes?" *Id.*

The Third Circuit's decision in *Deibler* is important because the Court concluded that nondelinquency requirements for candidacy violate the Equal Protection Clause even when subjected to the *lowest* standard of constitutional review. Since the Town Charter provisions you questioned would be held to the *highest* standard of review, it is reasonable to infer that they are unconstitutional as well.

Delaware, of course, is located within the federal appellate jurisdiction of the Third Circuit Court of Appeals, where *Deibler* was decided. In 1995, the Sixth Circuit Court of Appeals considered a city ordinance which prevented residents from appearing on the ballot for local elections if they were delinquent on their taxes or usage fees. *Corrigan v. City of Newaygo*, 55 F.3d 1211 (6th Cir. 1995). The Court in *Corrigan* concluded that the nondelinquency requirement did not violate the Equal Protection Clause. Like the *Deibler* court, the Sixth Circuit rejected the city's claims that the

nondelinquency requirement assured a candidate's commitment to the city and advanced public respect for the electoral process. However, the *Corrigan* court accepted the city's contention that the tax-paying requirement "is a means of collecting taxes, not a means of restricting political speech or the right to vote." *Id.* at 1215. The Court reasoned that "[t]he duty of paying taxes and water and sewer assessments is undertaken when a resident chooses to own property," *id.* at 1216, and that the requirement "does serve the economic purpose of enforcing the City's tax regime" by providing an incentive to people who want to run for office to pay their taxes. *Id.*

The reasoning of the *Corrigan* court was specifically rejected in a case decided shortly afterwards, involving removal of tax-delinquent officials. In *Hunt v. City of Longview*, 932 F.Supp. 828 (E.D. Texas 1995), *aff'd* 95 F.3d 49, the trial court concluded that tax collection was too remote and attenuated a reason for the nondelinquency provision to survive constitutional review. *Id.* at 841. It noted "[i]f the City needs to collect on liabilities owed to it, let it do so as it would against any other citizen who is in arrears to the City. Removing one from office for failure to pay taxes and fees, all for the touted purpose of administering the tax system, without ever attempting to collect on the liabilities owed, is irrational." *Id.*

In our opinion, *Deibler* and *Hunt* are the best guides for predicting the unconstitutionality of the Town Charter provisions. They are consistent with the Supreme Court cases invalidating other voting restrictions linked to taxation status. See *Section 3, supra*. They also reflect the Court's generalized dislike for burdening the right to vote by imposing economic requirements. See, e.g., *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966) (poll tax unconstitutional). Finally, even though the Sixth Circuit concluded that the nondelinquency requirement was constitutional, it did not "disagree with the Third Circuit [in *Deibler*] that the ordinance is not well-tailored to accomplish the other objectives the defendant claims it does." *Corrigan*, at 1217. This comment suggests that the Sixth Circuit recognized that the questioned provisions would not pass constitutional muster if subjected to a higher standard of review.

Conclusion

Because the nondelinquency provisions abridge voting rights, the Towns would have to demonstrate that the requirements are *necessary* to promote a *compelling* governmental interest. Even assuming that tax collection is a compelling interest, it is unlikely that disenfranchisement is "necessary" to the Towns' enforcement efforts, in light of other avenues for collecting unpaid taxes (including, for example, liens created under Chapter 29 of Title 25 of the *Delaware Code*)

1. Several of the charters you identified also require *candidates* to be current in their local obligations. While you did not request an opinion on the constitutionality of these limitations, we note that they are indistinguishable from those invalidated by the *Deibler* court.

Finally, the Third Circuit has already invalidated similar limitations on candidacy, applying a more deferential standard of review. As a result, we conclude that the charter provisions you questioned violate the Equal Protection Clause and are unconstitutional.

Very truly yours,
Louann Vari, Deputy Attorney General

Approved:
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB11

June 25, 1999

Mr. Albeit G. Porach
220 E. Park Place
Newark, DE 19711

**Re: Freedom of Information Act Complaint Against
City of Newark**

Dear Mr. Porach:

Our Office received your Freedom of Information Act ("FOIA") complaint on March 25, 1999. You alleged that the City of Newark ("the City") violated the notice requirements of FOIA by amending the agenda at the start of the City Council meeting on March 22, 1999 to include a \$675,000 amendment to the 1999 city budget.

By letter dated March 31, 1999, we asked the City to respond to your complaint within ten days. The City Solicitor asked for an extension of time to respond to your complaint, which we granted.

In its letter of April 27, 1999 (which we did not receive until May 3, 1999), the City acknowledged that "[t]he agenda of the March 22 Council meeting was amended at the commencement of this meeting in order to consider the budget amendment. " The City claims that "[a]gendas are subject to the addition or deletion of items 'which arise at the time of the public body's meeting'" (quoting 29 Del.C. Section 10004(e)(2)).

FOIA requires that "[e]very meeting of all public bodies shall be open to the public" except those closed for executive session for a purpose authorized by law. 29 Del.C. Section 10004(a). In addition,

[a]ll public bodies shall give public notice of their regular meetings and of their intent to hold an

executive session closed to the public, at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at that time, and the dates, times and places of such meetings; however, the agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting.

29 Del.C. Section 10004(e)(2).

This Office has previously addressed the issue of a public body's amending the agenda. The key is whether the amended matter for discussion arose at the time of the public body's meeting. "If a public body knows that an item of public interest will be addressed at a meeting, then it cannot claim, in good faith, that the issue arose at the time of the public body's meeting in order to circumvent the notice requirements of FOIA. On the other hand, discussion of noticed items can often segue into related public issues, and FOIA provides flexibility to address that situation." Att'y Gen. OP. 97-IB20 (Oct. 20, 1997).

The agenda for the March 22, 1999 meeting did not give any indication that the City Council would consider and vote on an amendment to the 1999 budget. Yet twelve days earlier, on March 10, 1999, the City entered into an agreement of sale to purchase a parcel of land on East Delaware Avenue. The purchase price was not included in the original 1999 budget, which therefore required an amendment. The issue of a budget amendment arose well prior to the meeting on March 22, 1999, and could have been included in the agenda posted for that meeting within the seven days required by law.

For the foregoing reasons, we conclude that the City violated the notice and agenda requirements of FOIA by trying to revise the agenda at the start of the March 22, 1999 meeting to include the \$675,000 budget amendment. As a consequence, the Council's vote approving the amendment is voidable. In order to remediate this violation of FOIA, we direct the City to place the budget amendment on the agenda of the next regularly scheduled meeting, or at a special meeting if scheduled sooner, to give the public notice and an opportunity to be heard prior to voting on the budget amendment. We also direct the City to report back to us in writing when it has complied with this remediation directive.

The Department of Justice acknowledges that this opinion has been delayed as a result of our internal review process. We regret any inconvenience caused thereby.

Very truly yours,
W. Michael Tupman, Deputy Attorney General

APPROVED
Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB12

September 21, 1999

Mr. John T. Wells
IO 1 Hilltop Road
Wilmington, DE 19809

**RE: Freedom of Information Act Complaint Against
Brandywine School District**

Dear Mr. Wells:

By letter dated July 20, 1999 (received by this Office on July 29, 1999), you alleged that the Brandywine School District ("the School District") had violated the Delaware Freedom of Information Act, 29 Del.C. Sections 10001-10005 ("FOIA"), by failing to comply with Title 14, Chapter 8 of the Delaware Code by not providing you with the names of members of the District Advisory Committee and its refusal to respond to your request for the report and recommendations of the Committee.

By letter dated August 2, 1999, we asked the School District for its response to your complaint. By letter dated August 23, 1999, Richard A. Hauge, Director of Management Services, responded directly to you stating that "no committee has been formed or appointed as of this point in time" and that he could not "provide you with a copy of their Report and Recommendations due to the fact that no such document has been written."

Statutory Provisions

Section 10002(d) of FOIA defines the term "public record" as

... information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.

Opinion

Under federal law, "[i]t is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request." *Yeager v. Drug Enforcement Administration*, 678 F. 2d 315, 321 (D.C. Cir.

1982) (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975)). A requestor "is entitled only to records that an agency has in fact chosen to create and retain. Thus, although an agency is entitled to possess a record, it need not obtain or regain possession of a record in order to satisfy a FOIA request." *Yeager*, 678 F. 2d at 321. *See also Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 152 (1980) ("the Act does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained. ").

This Office has concluded that the law in Delaware is the same. "FOIA does not require a public body 'to create a record where the requested record does not exist.'" Opinion 96-IB28 (Aug. 8, 1996) (quoting *Hartzell v. Mayville Community School District*, Mich App., 455 N.W.2d 411, 412 (1990)). Furthermore, FOIA does not require a public body "'to compile the requested data from' other public records that may exist." Opinion 96-IB28 (Aug. 8, 1996) (quoting *DiRose v. New York State Department of Correctional Services*, App. Div, 627 N.Y. S. 2d 850 (1995)). It necessarily follows that, under circumstances in which a public body has not taken action or created a public record, even if mandated to do so by statute, the public body has no FOIA obligation to produce that which does not exist.

Conclusion

For the foregoing reasons, we determine that the School District has not violated FOIA. As noted to you in a letter from this office dated August 2, 1999, the review of your complaint was limited strictly to the FOIA issues and not to your request for our opinion on how to enforce the provisions of Title 14 Chapter 8.

Very truly yours,

Michael J. Rich, State Solicitor

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB13

September 22, 1999

The Honorable G. Robert Quillen
State Representative, Thirtieth District
House of Representatives
State of Delaware
Legislative Hall
Dover, Delaware 19901

RE: Department of Agriculture Regulations Enacted Pursuant to 16 Del. C § 4757 (e)

Dear Representative Quillen:

You have asked whether the Department of Agriculture has exceeded its authority and failed to implement the intent and clear language of 16 Del.C. §4757(e) by enacting regulations that require syringes for poultry and livestock to be dispensed only pursuant to a valid veterinarian's prescription. For the reasons set forth below, this office concludes that the Department's regulations are within the authority granted to it by the statute.

Sixteen Del.C. § 4757 makes it a criminal offense to sell, furnish or possess a hypodermic needle or syringe without a prescription. Section 4757(a) provides:

No person shall deliver at retail or famish to any person other than a practitioner an instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle or any instrument adapted for the use of narcotic drugs by parental injection without a written order of a practitioner or oral order of a practitioner immediately reduced to writing by such person.

Section 4757(c) provides:

No person except a practitioner or regular dealer in medical or surgical supplies or their authorized agents or employees shall possess an instrument described in subsection (a) of this section, without having in the person's possession a certificate from a physician certifying that the possession of such instrument is necessary for the treatment of an injury, deformity or disease then suffered by the person possessing the same.

The statute separates out certain categories of people and syringe uses, however, and treats them differently. Subsection (f)(1) specifically exempts from the requirements of the section wholesale sales by pharmacies, drug jobbers, drug wholesalers, drug manufacturers and surgical instrument manufacturers and dealers, and Subsection (f)(2) exempts syringes for industrial use.

The syringe use that is the subject of your inquiry is addressed in Section 4757(e), which provides:

Nothing in this section shall prohibit the delivery, famishing, sale, purchase or possession of an instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle used or to be used solely and

exclusively for treating poultry or livestock and such delivery, famishing, sale, purchase, possession or use shall be governed by rules and regulations to be prescribed by the Department of Agriculture.

The Department of Agriculture has adopted rules and regulations to govern the delivery, furnishing, sale, purchase, possession or use of hypodermic syringes and needles. The regulations provide that, in order to obtain syringes for poultry and livestock use, a person must register and receive a permit from the Department as a "livestock producer," defined as one who owns at least five (5) of certain enumerated types of animals, or a "poultry producer," defined as one who owns a flock of at least twenty five (25) live fowl.

You have expressed concern regarding the Department's authority to adopt regulation provision number 5, which provides that "[n]o permit holder shall deliver, furnish or sell, and no person shall purchase, possess or use syringes or needles except pursuant to and in accordance with a valid prescription issued by the Delaware State Veterinarian or a veterinarian licensed to practice veterinary medicine in the State of Delaware or any state immediately adjacent to Delaware." Specifically, you have asked whether the Department may impose a requirement upon livestock and poultry producers to obtain a prescription for syringes, when poultry and livestock use is treated differently as a category of syringe use in Section 4757's scheme, and is not subject to the general prescription requirement of the statute.

To answer your question, this office turns first to the framework that the Superior Court has set forth in which to examine and interpret the provisions of a statute:

The foundational rule of statutory construction is that a court must give a statute its plain meaning if the statutory language is clear and unambiguous. That is, the court is "bound to give effect to the literal meaning without consulting other indicia of intent or meaning when the meaning of the statutory text itself is 'plain' or 'clear and unambiguous.'" This rule makes it necessary first to determine whether a statute has a plain meaning or is ambiguous in order to know whether other indicia of intent or meaning should be considered.

Bestemps v. Gibbs, Super. Ct., C.A. No. 98A-04-003, Barron, J. (October 22, 1998) at 2 (citations omitted).

"Before resort can be made to the usual secondary sources of statutory construction, a Court under our law must at least find ambiguity as to the legislative intent ... in the language of the statute itself." *Townshend v. Liberty Mutual Insurance Co.*, Super. Ct., C.A. No. 96C- 1 0- 1 80-WTQ, Quillen, J. (May 22, 1998) at 3.

A reading of the plain language of Subsection (e)

reveals that the poultry and livestock syringe use is not, in fact, exempt from the general prescription requirement of Section 4757; it is merely placed under a different regulatory scheme implemented and administered by the Department of Agriculture, as opposed to the Department of Health and Social Services, the agency generally responsible for regulation and enforcement of Title 16. The Subsection does not contain any language exempting poultry and livestock syringe use from the prescription requirement, as Subsection (f) does; it merely requires the Department of Agriculture to adopt regulations for such use.

Even if the language were ambiguous, such that the principles of statutory construction are properly applied, application of these principles leads to the same result. Delaware courts have cited with approval the principle of "*expressio unius est exclusio alterius*," meaning, the expression of one thing is the exclusion of another. *Hickman v. Workman*, Del. Supr., 450 A.2d 388,391 (1982). The only uses and classes of people expressly excluded from the prescription requirements of the statute are the wholesalers and related professionals in Subsection (f)(1), and industrial uses in Subsection (f)(2). Poultry and livestock syringe use is not included in either of those provisions; therefore, the application of *expressio unius est exclusio alterius* dictates the conclusion that such use was not intended to be excluded from the prescription requirement. Further, the presence of Subsection (f) is evidence that the legislature considered the issue of exclusion from the prescription requirement, and in fact provided for exclusion from the requirement in certain instances. Were poultry and livestock syringe use intended to be exempt from the requirement, it could have been included in this subsection, and, significantly, was not.

Additionally, in questions of statutory interpretation, the analysis must recognize that the "[L]egislature inserted every provision for some useful purpose and construction.... Similarly, where a provision is expressly included in one section of a statute, but is omitted from another, it is reasonable to assume that the Legislature was aware of the omission and intended it. The Courts may not engraft upon a statute language which has been clearly excluded therefrom by the Legislature." *Murtha v. Continental Opticians, Inc.*, Super. Ct., 729 A.2d 312, 318 (1997)(citations omitted). Construing the statute as eliminating the prescription requirement for poultry and livestock syringe use ignores the fact that this use was not included under Subsection (0), and ignores the evidence of the legislature's intent to treat such use differently by including it in the statute under a separate provision, differently worded than the provision specifically excluding certain uses from the prescription requirement by Subsection (f).

Application of the above principles of statutory interpretation leads this office to the conclusion that, were poultry and livestock syringe use intended to be completely exempt from the prescription requirement, it would have

been included in Subsection (f) of the statute with the wholesalers and industrial users. However, poultry and livestock use is addressed in a different subsection, which, notably, does not expressly exempt it from the prescription requirement. Subsection (e) merely provides that nothing shall prohibit the furnishing or use of syringes on livestock or poultry, and places the responsibility for regulating the distribution and use of the syringes on the Department of Agriculture. Because use of syringes on livestock and poultry is not specifically exempt from the prescription requirement, the Department of Agriculture as not exceeded its authority under the statute in adopting regulations which require livestock and poultry producers to obtain a prescription for such use.

This interpretation is also consistent with the vast majority of statutes in other states throughout the nation, as most states make no exception from prescription requirements for syringes purchased or possessed for use on animals. Only a small number of states permit syringes to be sold without a prescription, even for use solely on animals.¹ We do note that, according to the Department of Agriculture, the procedures imposed by the regulations are designed to require only minimal inconvenience to animal owners. A prescription can be obtained from a local veterinarian or from the State Veterinarian, Dr. Towers, and can be filed with the wholesaler who can ship product upon demand. The prescription is valid for a one year period and can be renewed at the doctor's discretion. The Department believes that the safeguards imposed by the regulations are reasonable and designed to protect the public.

Should you have any additional questions or require any additional information to you as you consider this issue, please do not hesitate to ask. Until then, I remain,

Very truly yours,

C. Drue Chichi, Deputy Attorney General

APPROVED:

Michael J. Rich, State Solicitor

1. See CAL. Bus. & PROF. CODE § 4145 (West 1996) (California); CoNN.GEN. STAT. § 21a-65 (1995) (Connecticut); 720 I.L.C.S. 635/5 (1993) (Illinois); MWN. STAT. ANN. § 151.40 (1998) (Minnesota).

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION
NO. 99-IB14

November 5, 1999

Mr. Philip A. Ceresini, III
1204 Spruce Avenue
Wilmington, DE 19805

**RE: Freedom of Information Act Complaint Against
Town of Elsmere**

Dear Mr. Ceresini:

In your letter dated July 13, 1999 (received by this Office on July 16, 1999), you alleged that the Town of Elsmere (the "Town") had violated the Delaware Freedom of Information Act, 29 Del.C. Sections 10001-10005 ("FOIA"), by denying you access to public records. Specifically, you allege that the Town did not allow you to review documents police complaint file No. 99-188 relating to an unregistered motor vehicle parked in your driveway.

By letter dated July 23, 1999, we asked the Town to respond to this issue. By letter dated July 28, 1999, the Town answered stating that the information you asked to see is exempt from disclosure under FOIA under the "investigative file" exception. Alternatively, the Town claims that the records are protected under the "criminal file" and "intelligence file" exceptions.

For the reasons given below, we conclude that the exception for "investigative files" protects the requested records from disclosure.

Statutory Provisions

Section 10003(a) of FOIA provides: "All public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body." Section 10002(d)(3) excepts from the definition of a "public record" "[i]nvestigative files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations, and child custody and adoption files where there is no criminal complaint at issue.

Opinion

Although the statute refers to "pending" investigations, the Chancery Court has held that the "investigative file" exception to FOIA applies even after the file has been closed. See News Journal Co. v. Billingsley, Del.Ch., 1980

WL 3043 (Nov. 20, 1980) (Hartnett, V.C.). This is especially true in cases where no criminal charges are filed. Moreover, the investigatory file exception applies to administrative agencies, not just criminal law enforcement agencies such as the police. See, Equitable Trust Co. v. State, Md. Spec. App., 399 A.2d 908 (1979) (State Human Relations Commission investigating charges of racial discrimination); State ex rel. McGee v. Ohio Board of Psychology, Ohio Supr., 550 N.E. 2d 945, 947 (1990) (per curiam) (exception applied to "investigative activities of state licensing boards"). See also, Atty. Gen. Op. NO. 98IB13.

The Town's Code Enforcement Officer is charged with investigating violations of the Elsmere Code ("Code") and enforcing, if necessary, through criminal prosecution, violations of the Code. Elsmere Code §34-13. There are, for example, criminal penalties for violations of Chapter 171 of the Code (Property Maintenance). See Elsmere Code § 171-2C ("Any person who shall violate the provisions of this Code and Ordinance, or who shall fail to comply with any notice or order issued by the Code Official pursuant to the provisions of this Code, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine... or imprisonment for not more than thirty (30) days, or both...").

The Code Enforcement Office is the kind of investigative agency whose files FOIA exempts from disclosure. Accordingly, the complaint of Code violations which you have asked to review are not "public records" for purposes of FOIA. This investigative file exception applies whether or not the investigating agency decides "to file charges." McGee, supra. Indeed, the policies behind the exception are even more compelling when the agency decides not to take enforcement action, in order to protect the "identity of uncharged suspects." Id. In addition, protecting the identity of witnesses to uncharged violations serves an important government interest in the reporting of possible violations by citizens. Revealing the names of witnesses in uncharged complaints may have a chilling effect on enforcement by discouraging witness participation. If the investigation results in criminal charges, then that becomes a matter of public record and you may have access to whatever criminal records are available through the courts or required under the Constitution. Any individual who is charged has the right to confront witnesses whose testimony is used in a criminal prosecution. U.S. Const. Amend. 6. It is not necessary to identify a witness before trial. United States ex rel. Herhal v. Anderson, 334 F. Supp. 733 (D.Del. 1971)

Because we have determined that the exception for "investigative files" excludes the requested records from production under FOIA, it is unnecessary to address the alternative exceptions of "criminal files" and "intelligence files."

Conclusion

For the foregoing reasons, we determine that the Town did not violate FOIA by denying you access to public records.

Very truly yours,

Sherry V. Hoffman, Deputy Attorney General

APPROVED:

Michael J. Rich, State Solicitor

GENERAL NOTICES
DEPARTMENT OF TRANSPORTATION
Motor Fuel Tax Administration

DelDOT Motor Fuel Tax Administration presents the final versions of the following four applications. The applications are for

1. Special Fuel User License;
2. Special Fuel Dealer License;
3. Special Fuel Supplier License;
4. Gasoline Distributor License.

For more information please contact Ron Pinkett, Motor Fuel Tax Administrator, at 302-739-5218.

FOR DEPARTMENT USE ONLY ACCOUNT NUMBER: _____ LICENSE NUMBER: _____	STATE OF DELAWARE DEPARTMENT OF TRANSPORTATION MOTOR FUEL TAX ADMINISTRATION P. O. DRAWER E DOVER, DE 19903-1565	FOR DEPARTMENT USE ONLY FEE \$10.00 YEAR ENDING: JUNE 30, 2000
APPLICATION FOR SPECIAL FUEL USER LICENSE		
Please check the appropriate box: <input type="checkbox"/> New application <input type="checkbox"/> Renewal application		
PLEASE NOTE: A SEPARATE LICENSE APPLICATION IS REQUIRED FOR EACH DELAWARE SPECIAL FUEL BULK TANK LOCATION. ALL QUESTIONS MUST BE ANSWERED AND NECESSARY ADDITIONAL DOCUMENTATION ATTACHED TO PROCESS THIS LICENSE APPLICATION. PLEASE PRINT ALL ANSWERS CLEARLY.		
1. Legal name of applicant: _____		
2. Trade name, if different from legal name: _____		
3. Primary physical business location address (Not P.O. Box):		
Street: _____	City: _____	State: _____
4. Mailing address (if different from business location):		
Street or P. O. Box: _____	City: _____	State: _____
5. Location of records (if different from business location):		
Street: _____	City: _____	State: _____
6. Federal employer identification number or individual proprietor's SSN: _____		
7. Telephone number: <input style="width: 100px;" type="text"/> - <input style="width: 100px;" type="text"/> - <input style="width: 100px;" type="text"/> Fax number: <input style="width: 100px;" type="text"/> - <input style="width: 100px;" type="text"/> - <input style="width: 100px;" type="text"/>		
8. If we have questions regarding this application, who should we contact?		
Name: _____ Telephone number: <input style="width: 100px;" type="text"/> - <input style="width: 100px;" type="text"/> - <input style="width: 100px;" type="text"/>		
9. Business type: (check one) Individual <input type="checkbox"/> Corporation <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> S Corporation <input type="checkbox"/>		
10. If the applicant business is incorporated under the laws of another state, please attach a certified copy of the certificate issued by the Delaware Secretary of State showing that the corporation is authorized to transact business in Delaware.		
11. If individual, give proprietor name, address, & SSN. If partnership, give name, address, & SSN of each partner. If corporation, give names, titles, addresses, & SSN's of corporate officers (President, Vice President, Secretary, Treasurer)		
Name/Title	Address	Social Security #
_____	_____	<input style="width: 50px;" type="text"/> - <input style="width: 50px;" type="text"/> - <input style="width: 50px;" type="text"/>
_____	_____	<input style="width: 50px;" type="text"/> - <input style="width: 50px;" type="text"/> - <input style="width: 50px;" type="text"/>
_____	_____	<input style="width: 50px;" type="text"/> - <input style="width: 50px;" type="text"/> - <input style="width: 50px;" type="text"/>

GENERAL NOTICES

12. Has the applicant ever applied for a Delaware Special Fuel User license in the past?
Yes No If yes, please specify what calendar year: _____

13. Has the applicant's individual partners or corporate officers ever applied for a Delaware Special Fuel User's license in the past?
Yes No N/A If yes, under what name: _____
Please specify what calendar year: _____

14. Please list the physical address of the Delaware special fuel bulk location for which this license will be applicable:

15. Please list below the size of the tank, number of pump hoses, type of special fuel delivered to the tank, and the supplier name/address that will be delivering special fuel to this tank.

Type of Special Fuel:	Size of Delaware Bulk Tank: _____
Low Sulfur Clear Diesel <input type="checkbox"/>	Number of Pump Hoses: _____
Low Sulfur Dyed Diesel <input type="checkbox"/>	
Propane <input type="checkbox"/>	
Compressed Natural Gas <input type="checkbox"/>	
Other: _____ <input type="checkbox"/>	

Supplier Name:	Supplier Address:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

16. Will the bulk storage location be used to fuel licensed vehicles only? Yes No

17. Will the bulk storage location be used to fuel non licensed equipment only? Yes No

18. Please list the type of non licensed equipment that will be fueling from this bulk storage location.

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

19. Will special fuel be sold from this bulk storage location? Yes No Note: The Delaware Special Fuel Law does not authorize special fuel to be sold to third parties under a Special Fuel User license.

GENERAL NOTICES

20. List the number & type of licensed vehicles that will be fueling from this bulk storage tank:

<u>Vehicle Type</u>	<u>Number of Vehicles</u>
Road Tractors	_____
3 Axle Trucks	_____
2 Axle Trucks	_____
Other	_____

21. Estimate the number of gallons of taxable special fuel that will be used by the applicant from this tank during an average month:

<u>Average Gallons Per Month</u>	<u>Taxable Special Fuel</u>
_____	_____

22. Does this application involve a change in the company's legal name or federal identification number? Yes No
 If yes, list the previous name and number.

Company name _____

Federal employer identification number or social security number: _____

23. Does the application involve the takeover and continuation of another business? Yes No
 If yes, list the following:

Company name _____

Federal employer identification number or social security number: _____

24. Have all persons responsible for reportable fuel activity read the Motor Fuel & Special Fuel Tax Law (Chap. 51, Title 30, DE. Code)? In addition, have all persons responsible for reportable fuel activity read the Delaware Policy Directive regarding the "Taxation of Low Sulfur Clear Diesel"? Do these persons understand these provisions? Yes No

25. Have any individuals identified in Item 11 of this application ever been convicted of a felony? Yes No
 Please provide copies of the criminal history records that detail the nature of the felony and the current status of any related sentencing provision. Please note that a "Yes" response to this question will not necessarily disqualify the applicant.

Before signing, please read the following statement carefully: Any false or substantive omission of information may be cause for rejection of application, or revocation of license (if license approval has been granted).

I (we), certify under penalty provided by law, that the statements made and the information furnished in this application are true, correct, and complete to the best of my knowledge and belief.

 Authorized Name (Please Print)

 Authorized Signature

 Authorized Individual Title

 Date of Application

GENERAL NOTICES

993

FOR DEPARTMENT USE ONLY

ACCOUNT NUMBER: _____

LICENSE NUMBER: _____

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
MOTOR FUEL TAX ADMINISTRATION
P. O. DRAWER E
DOVER, DE 19903-1565

FOR DEPARTMENT USE ONLY

FEE \$10.00

YEAR ENDING: JUNE 30, 2000

APPLICATION FOR SPECIAL FUEL DEALER LICENSE

Please check the appropriate box: New application Renewal application

PLEASE NOTE: A SEPARATE LICENSE APPLICATION IS REQUIRED FOR EACH DELAWARE SPECIAL FUEL BULK TANK LOCATION. ALL QUESTIONS MUST BE ANSWERED AND NECESSARY ADDITIONAL DOCUMENTATION ATTACHED TO PROCESS THIS LICENSE APPLICATION. PLEASE PRINT ALL ANSWERS CLEARLY.

1. Legal name of applicant: _____

2. Trade name, if different from legal name: _____

3. Primary physical business location address (Not P.O. Box):
Street: _____ City: _____ State: _____

4. Mailing address (if different from business location):
Street or P. O. Box: _____ City: _____ State: _____

5. Location of records (if different from business location):
Street: _____ City: _____ State: _____

6. Federal employer identification number or individual proprietor's SSN: _____

7. Telephone number: -- Fax number: --

8. If we have questions regarding this application, who should we contact?
Name: _____ Telephone number: --

9. Business type: (check one) Individual Corporation General Partnership Limited Partnership
Limited Liability Company S Corporation

10. If the applicant business is incorporated under the laws of another state, please attach a certified copy of the certificate issued by the Delaware Secretary of State showing that the corporation is authorized to transact business in Delaware.

11. If individual, give proprietor name, address, & SSN. If partnership, give name, address, & SSN of each partner. If corporation, give names, titles, addresses, & SSN's of corporate officers (President, Vice President, Secretary, Treasurer)

Name/Title

Address

Social Security #

--
--
--
--

GENERAL NOTICES

12. Has the applicant ever applied for a Delaware Special Fuel Dealer license in the past?
Yes No If yes, please specify what calendar year: _____

13. Has the applicant's individual partners or corporate officers ever applied for a Delaware Special Fuel Dealer license in the past?
Yes No N/A If yes, under what name: _____
Please specify what calendar year: _____

14. Please list the physical address of the Delaware special fuel bulk location for which this license will be applicable:

15. Please list below the size of the tank, number of pump hoses, type of special fuel delivered to the tank, and the supplier name/address that will be delivering special fuel to this tank.

Type of Special Fuel:	Size of Delaware Bulk Tank: _____
Low Sulfur Clear Diesel <input type="checkbox"/>	Number of Pump Hoses: _____
Low Sulfur Dyed Diesel <input type="checkbox"/>	
Propane <input type="checkbox"/>	
Compressed Natural Gas <input type="checkbox"/>	
Other: _____ <input type="checkbox"/>	

Supplier Name: _____ Supplier Address: _____

16. Will this bulk storage location be used to fuel licensed vehicles owned and/or operated by the applicant? Yes No

17. Will this bulk storage location be selling special fuel to licensed vehicles not owned and/or operated by the applicant?
Yes No

18. Please list the name of the customers that will be purchasing special fuel from this Delaware bulk storage location. Please note that if the applicant is planning to sell special fuel to more than five customers, please record the following statement on the line below: "Various customers sales".

GENERAL NOTICES

19. Will special fuel be sold in a nontaxable manner from this bulk storage location? Yes No

20. If the box in line #19 was checked "Yes", please list the type of non taxable sales that will be occurring from this bulk storage location. (For example: reefer tanks, farm equipment, construction equipment, etc.)

21. Please record the date that the applicant began selling taxable special fuel in Delaware: _____

22. Estimate the number of gallons of taxable special fuel that will be sold by the applicant from this tank during an average month:

Average Gallons Per Month	Taxable Special Fuel Sales
_____	_____

23. Does this application involve a change in the company's legal name or federal identification number? Yes No
If yes, list the previous name and number.
Company name _____
Federal employer identification number or social security number: _____

24. Does the application involve the takeover and continuation of another business? Yes No
If yes, list the following:
Company name _____
Federal employer identification number or social security number: _____

25. Have all persons responsible for reportable fuel activity read the Motor Fuel & Special Fuel Tax Law (Chap. 51, Title 30, DE Code)? In addition, have all persons responsible for reportable fuel activity read the Delaware Policy Directive regarding the "Taxation of Low Sulfur Clear Diesel"? Do these persons understand these provisions? Yes No

26. Have any individuals identified in Item 11 of this application ever been convicted of a felony? Yes No
Please provide copies of the criminal history records that detail the nature of the felony and the current status of any related sentencing provision. Please note that a "Yes" response to this question will not necessarily disqualify the applicant.

Before signing, please read the following statement carefully: Any false or substantive omission of information may be cause for rejection of application, or revocation of license (if license approval has been granted).

I (we), certify under penalty provided by law, that the statements made and the information furnished in this application are true, correct, and complete to the best of my knowledge and belief.

Authorized Name (Please Print) _____ Authorized Signature _____
Authorized Individual Title _____ Date of Application _____

GENERAL NOTICES

FOR DEPARTMENT USE ONLY
 ACCOUNT NUMBER: _____
 LICENSE NUMBER: _____

STATE OF DELAWARE
 DEPARTMENT OF TRANSPORTATION
 MOTOR FUEL TAX ADMINISTRATION
 P. O. DRAWER E
 DOVER, DE 19903-1565

FOR DEPARTMENT USE ONLY
 FEE \$10.00
 YEAR ENDING: JUNE 30, 2000

APPLICATION FOR SPECIAL FUEL SUPPLIER LICENSE

Please check the appropriate box: New application Renewal application

PLEASE NOTE: ALL QUESTIONS MUST BE ANSWERED AND NECESSARY ADDITIONAL DOCUMENTATION ATTACHED TO PROCESS THIS LICENSE APPLICATION. PLEASE PRINT ALL ANSWERS CLEARLY.

1. Legal name of applicant: _____

2. Trade name, if different from legal name: _____

3. Primary physical business location address (Not P.O. Box):
 Street: _____ City: _____ State: _____

4. Mailing address (if different from business location):
 Street or P. O. Box: _____ City: _____ State: _____

5. Location of records (if different from business location):
 Street: _____ City: _____ State: _____

6. Federal employer identification number or individual proprietor's SSN: _____

7. Telephone number: -- Fax number: --

8. If we have questions regarding this application, who should we contact?
 Name: _____ Telephone number: --

9. Business type: (check one) Individual Corporation General Partnership Limited Partnership
 Limited Liability Company S Corporation

10. If the applicant business is incorporated under the laws of another state, please attach a certified copy of the certificate issued by the Delaware Secretary of State showing that the corporation is authorized to transact business in Delaware.

11. If individual, give proprietor name, address, & SSN. If partnership, give name, address, & SSN of each partner. If corporation, give names, titles, addresses, & SSN's of corporate officers (President, Vice President, Secretary, Treasurer)

<u>Name/Title</u>	<u>Address</u>	<u>Social Security #</u>
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>

GENERAL NOTICES

997

12. Has the applicant ever applied for a Delaware Special Fuel Supplier license in the past?
 Yes No If yes, please specify which calendar year: _____

13. Has the applicant's individual partners or corporate officers ever applied for a Delaware Special Fuel Supplier license in the past?
 Yes No N/A If yes, under what name: _____
 Please specify which calendar year: _____

14. Does the applicant operate only in Delaware? Date business started in Delaware:
 Yes No MONTH _____ DAY _____ YEAR _____

15. List below each bulk storage location where special fuel is maintained that is owned and/or leased by the applicant within Delaware. In addition, please check the box which applies to how the special fuel is used and/or sold for each tank.

PHYSICAL LOCATION OF BULK STORAGE	FUEL TYPE	TOTAL GALLON CAPACITY	STORAGE TANK DISTRIBUTION	
			TAXABLE USE/SALES	NON TAXABLE USE/SALES
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

16. What type of fuel business does the applicant operate in Delaware? Check all that apply:

	CLEAR DIESEL	DYED DIESEL	CLEAR KERO	DYED KERO	JET FUEL	LP GAS	CN GAS	OTHER
Refinery/Manufacturing	<input type="checkbox"/>							
Terminal rack sales	<input type="checkbox"/>							
Tank wagon sales to residential & commercial accts.	<input type="checkbox"/>							
Transport sales to residential & commercial accts.	<input type="checkbox"/>							
Company owned retail service stations	<input type="checkbox"/>							
Sales to commissioned/consignment retail stations	<input type="checkbox"/>							
Exchange agreement transactions	<input type="checkbox"/>							
Other: _____	<input type="checkbox"/>							

GENERAL NOTICES

17. Will the applicant be importing special fuel into Delaware? Yes No

If yes, will the applicant be hiring a common carrier to import the product? Yes No

If yes, please list the name, federal identification number, and telephone number of the common carrier:

<u>Carrier Name</u>	<u>FEI Number</u>	<u>Telephone Number</u>
_____	_____	□□□-□□□-□□□□
_____	_____	□□□-□□□-□□□□
_____	_____	□□□-□□□-□□□□

18. List each state from which the applicant will import special fuel into Delaware, & the applicant's license number in that state:

<u>State Name</u>	<u>License Number</u>
_____	_____
_____	_____
_____	_____
_____	_____

19. List the states to which the applicant will export special fuel from Delaware supply points, & the applicant's license number in that state:

<u>State Name</u>	<u>License Number</u>
_____	_____
_____	_____
_____	_____
_____	_____

20. Provide the following information about suppliers & exchange partners, which affect Delaware, from whom the applicant purchases special fuel. Attach another page if more space is required:

<u>Company Name</u>	<u>Shipping Point</u>	<u>Type of Fuel Purchased</u>	<u>Type of Relationship</u>	
			<u>Supplier</u>	<u>Exchange Partner</u>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

21. Indicate the number of retail service stations operated by the applicant in Delaware _____

22. Estimate the number of retail service stations the applicant supplies in Delaware _____

GENERAL NOTICES

999

23. Does the applicant transport special fuel for hire in Delaware? Yes No

24. Please indicate the number of diesel powered off highway equipment the applicant operates in Delaware. _____

25. Estimate the number of gallons of taxable special fuel that will be sold or used by the applicant during an average month:

	<u>Taxable Special Fuel</u>
Average Gallons Per Month - Sales	_____
Average Gallons Per Month - Use	_____
Average Total Gallons - Sales & Use	_____

26. Please record the date that the applicant began using and/or selling taxable special fuel in Delaware: _____

27. Does this application involve a change in the company's legal name or federal identification number? Yes No
If yes, list the previous name and number:
Company name _____
Federal employer identification number or social security number: _____

28. Does the application involve the takeover and continuation of another business? Yes No
If yes, list the following:
Company name _____
Federal employer identification number or social security number: _____

29. Have all persons responsible for reportable fuel activity read the Motor Fuel & Special Fuel Tax Law (Chap. 51, Title 30, DE. Code)? In addition, have all persons responsible for reportable fuel activity read the Delaware Policy Directive regarding the "Taxation of Low Sulfur Clear Diesel"? Do these persons understand these provisions? Yes No

30. Have any individuals identified in Item 11 of this application ever been convicted of a felony? Yes No
Please provide copies of the criminal history records that detail the nature of the felony and the current status of any related sentencing provision. Please note that a "Yes" response to this question will not necessarily disqualify the applicant.

Before signing, please read the following statement carefully: Any false or substantive omission of information may be cause for rejection of application, or revocation of license (if license approval has been granted).

I (we), certify under penalty provided by law, that the statements made and the information furnished in this application are true, correct, and complete to the best of my knowledge and belief.

Authorized Name (Please Print) _____	Authorized Signature _____
Authorized Individual Title _____	Date of Application _____

GENERAL NOTICES

FOR DEPARTMENT USE ONLY

ACCOUNT NUMBER: _____

LICENSE NUMBER: _____

STATE OF DELAWARE
 DEPARTMENT OF TRANSPORTATION
 MOTOR FUEL TAX ADMINISTRATION
 P. O. DRAWER E
 DOVER, DE 19903-1565

FOR DEPARTMENT USE ONLY

FEE \$10.00

YEAR ENDING: JUNE 30, 2000

APPLICATION FOR GASOLINE DISTRIBUTOR LICENSE

Please check the appropriate box: New application Renewal application

PLEASE NOTE: ALL QUESTIONS MUST BE ANSWERED AND NECESSARY ADDITIONAL DOCUMENTATION ATTACHED TO PROCESS THIS LICENSE APPLICATION. PLEASE PRINT ALL ANSWERS CLEARLY.

1. Legal name of applicant: _____

2. Trade name, if different from legal name: _____

3. Primary physical business location address (Not P.O. Box):
 Street: _____ City: _____ State: _____

4. Mailing address (if different from business location):
 Street or P. O. Box: _____ City: _____ State: _____

5. Location of records (if different from business location):
 Street: _____ City: _____ State: _____

6. Federal employer identification number or individual proprietor's SSN: _____

7. Telephone number: -- Fax number: --

8. If we have questions regarding this application, who should we contact?
 Name: _____ Telephone number: --

9. Business type: (check one) Individual Corporation General Partnership Limited Partnership
 Limited Liability Company S Corporation

10. If the applicant business is incorporated under the laws of another state, please attach a certified copy of the certificate issued by the Delaware Secretary of State showing that the corporation is authorized to transact business in Delaware.

11. If individual, give proprietor name, address, & SSN. If partnership, give name, address, & SSN of each partner. If corporation, give names, titles, addresses, & SSN's of corporate officers (President, Vice President, Secretary, Treasurer)

Name/Title	Address	Social Security #
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>
_____	_____	<input type="text"/> - <input type="text"/> - <input type="text"/>

GENERAL NOTICES

1001

12. Has the applicant ever applied for a Delaware Distributor license in the past?
 Yes No If yes, please specify which calendar year: _____

13. Has the applicant's individual partners or corporate officers ever applied for a Delaware Distributor license in the past?
 Yes No N/A If yes, under what name: _____
 Please specify which calendar year: _____

14. Does the applicant operate only in Delaware? Date business started in Delaware:
 Yes No MONTH DAY YEAR

15. List below each location that is owned and/or leased by the applicant within Delaware. Please classify each location as Manufacturer/Refinery, Wholesale Distribution Plant, or Retail Facility. Use the letter "M" for Manufacturer/Refinery, "W" for Wholesale Distribution Plant, and "R" for Retail. Please note that more than one letter may be used for each location. In addition, please classify the shipment method of each location as: Own Vehicle, Pipeline, Barge, Vessel, Or Common Carrier.

LOCATION LETTER	PHYSICAL LOCATION OF PROPERTY (STREET, CITY, STATE)	INDICATE SHIPMENT METHOD:		GASOLINE STORAGE CAPACITY
		RECEIPTS	DISTRIBUTION	
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

16. What type of fuel business does the applicant operate in Delaware? Check all that apply:

	<u>GASOLINE</u>	<u>AVIATION GASOLINE</u>
Refinery/Manufacturing	<input type="checkbox"/>	<input type="checkbox"/>
Terminal rack sales	<input type="checkbox"/>	<input type="checkbox"/>
Tank wagon sales to residential & commercial accts.	<input type="checkbox"/>	<input type="checkbox"/>
Transport sales to residential & commercial accts.	<input type="checkbox"/>	<input type="checkbox"/>
Company owned retail service stations	<input type="checkbox"/>	<input type="checkbox"/>
Sales to commissioned/consignment retail stations	<input type="checkbox"/>	<input type="checkbox"/>
Exchange agreement transactions	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>

17. Will the applicant be importing gasoline and/or aviation gasoline into Delaware? Yes No

If yes, will the applicant be hiring a common carrier to import the product? Yes No

If yes, please list the name, federal identification number, and telephone number of the common carrier:

Carrier Name	FEI Number	Telephone Number
_____	_____	□□□-□□□-□□□□
_____	_____	□□□-□□□-□□□□
_____	_____	□□□-□□□-□□□□

GENERAL NOTICES

18. List the states from which the applicant will import gasoline and/or aviation gasoline into Delaware, & the applicant's license number in that state:

<u>State Name</u>	<u>License Number</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

19. List the states to which the applicant will export gasoline and/or aviation gasoline from Delaware supply points, & the applicant's license number in that state:

<u>State Name</u>	<u>License Number</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

20. Provide the following information about suppliers & exchange partners, which only affect Delaware, from whom the applicant purchases gasoline and/or aviation gasoline. Attach another page if more space is required:

<u>Company Name</u>	<u>Shipping Point</u>	<u>Shipping Dest.</u>	<u>Type of Relationship</u>	
			<u>Supplier</u>	<u>Exchange Partner</u>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

21. Indicate the number of retail service stations operated by the applicant in Delaware _____

22. Estimate the number of retail service stations the applicant supplies in Delaware _____

23. Does the applicant transport gasoline and/or aviation gasoline for hire in Delaware? Yes No

24. Does the applicant have off highway gasoline powered equipment which is fueled in DE? Yes No
If yes, please estimate how many: _____

GENERAL NOTICES

1003

25. Estimate the number of gallons of gasoline and/or aviation gasoline that will be sold or used by the applicant during an average month:		
	<u>Taxable Gasoline</u>	<u>Taxable Aviation Gas</u>
Average Gallons Per Month - Sales	_____	_____
Average Gallons Per Month - Use	_____	_____
Average Total Gallons - Sales & Use	_____	_____

26. Please record the date that the applicant began using and/or selling taxable gasoline in Delaware. _____

27. Does this application involve a change in the company's legal name or federal identification number? Yes No
If yes, list the previous name and number.
Company name _____
Federal employer identification number or social security number: _____

28. Does the application involve the takeover and continuation of another business? Yes No
If yes, list the following:
Company name _____
Federal employer identification number or social security number: _____

29. Have all persons responsible for reportable fuel activity read the Motor Fuel Tax Law (Chap. 51, Title 30, DE. Code) and do these persons understand its provisions? Yes No

30. Have any individuals identified in Item 11 of this application ever been convicted of a felony? Yes No
Please provide copies of the criminal history records that detail the nature of the felony and the current status of any related sentencing provision. Please note that a "Yes" response to this question will not necessarily disqualify the applicant.

Before signing, please read the following statement carefully: Any false or substantive omission of information may be cause for rejection of application, or revocation of license (if license approval has been granted).

I (we), certify under penalty provided by law, that the statements made and the information furnished in this application are true, correct, and complete to the best of my knowledge and belief.

Authorized Name (Please Print) _____	Authorized Signature _____
Authorized Individual Title _____	Date of Application _____

**DEPARTMENT OF
ADMINISTRATIVE SERVICES****DIVISION OF PROFESSIONAL REGULATION**

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 105(1), the Delaware Board of Accountancy proposes to revise its rules and regulations. Please note that the following rules and regulations are a total rewriting and reordering of existing regulations, and will supersede and replace any previously adopted rules and regulations of the Board. Substantive changes to the regulations include changes in definitions of full and part time employment as it relates to the statutory experience requirement; deletion of provisions pertaining to matters governed by other Acts and Statutes (e.g. disciplinary hearings); establishes application requirements; requires demonstration of good character and education requirements prior to approval to sit for examination; clarifies statutory requirements and required documentation for permits to practice certified public accountancy and for certificate reciprocity; establishes reporting requirements and clarifies substantive requirements for continuing education credits; and establishes procedural rules pertaining to hearings before the Board. In addition, material which unnecessarily duplicates the statutes or other rules and regulations has been stricken. The rules and regulations have been entirely re-ordered and re-numbered.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, February 23, 2000 in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Mary Paskey at the above address or by calling (302) 739-4522, extension 207.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

DEPARTMENT OF AGRICULTURE**HARNESS RACING COMMISSION**

The Delaware Harness Racing Commission has proposed twenty-four revisions to its existing rules. The Commission proposes these amendments pursuant to 3 Del. C. §10027 and 29 Del. C. §10113.

The Commission will accept written comments from the public from January 1, 2000 through January 30, 2000. The Commission will also conduct a public hearing on the proposed amendments on January 26, 2000 at 10:00 a.m. at Dover Downs, Dover, DE 19901. Copies of the proposed amendments and the existing rules can be obtained from John Wayne, Administrator of Racing, 2320 S. DuPont Street, Dover, DE 19901. Written comments should also be directed to Mr. Wayne's attention at the above address.

THOROUGHBRED RACING COMMISSION

The Delaware Thoroughbred Racing Commission proposes to amend the Commission's existing Regulations. The Commission proposes these amendments pursuant to 3 Del.C. §10103 and §10128

The Commission proposes three rule amendments which are summarized below:

1. Rule 19.03(a) would be amended to clarify that all appeals from decisions of the Stewards to the Commission must be filed with the Commission's Administrator of Racing. Rule 19.03(h) would be amended to add a new requirement that an appeal contain a sworn, notarized statement from the appellant stating that the appeal is taken in good faith and not for purposes of delay.
2. Rule 19.06(a) would be amended to provide that all requests for continuances must be filed with the Administrator of Racing with a copy sent to counsel for the Stewards. Rule 19.06(a) would be further amended to provide that the Commission will not consider continuance requests from attorneys who have not filed an entry of appearance and provide that all out-of-state attorneys must first be admitted under the pro hac vice provision of Delaware Supreme Court Rule 72 before the Commission will consider a continuance request.
3. Rule 19.06(c) would be amended to provide the Commission will not consider any request for continuance absent good cause and failure to take reasonable action to retain an attorney will not consider good cause.

The Commission will receive written public comments from January 1, 1999 through January 30, 2000. Comments should be sent to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901. Copies of the proposed rules can be obtained from the Commission office at the above address.

DEPARTMENT OF EDUCATION

The Department of Education will hold its monthly meeting on Thursday, January 20, 2000 at 2:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE**TAX APPEAL BOARD**

Please take Notice that the Delaware Tax Appeal Board proposes to adopt new rules and amend existing rules (including the Appendix to the Rules) of practice before the Board. The changes to the Board's rules are designed to streamline the processing of appeals before the Board and to provide for a small case procedure. The Board will receive and consider written comments from interested people on the proposed rules. Written comment must be submitted by February 29, 2000, and should be directed to the Board at its offices at the Carvel State Office Building, 8th Floor, 820 N. French Street, Wilmington, DE 19801.

Anyone wishing to obtain a copy of the proposed rules should contact Elizabeth Bremer, Administrative Assistant to the Board, by calling (302) 577-8665.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5,

Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Non-Emergency Transportation Provider Specific Manual.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by January 31, 2000.

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its 1115 Demonstration Waiver.

Under the authority of the Balanced Budget Act of 1997, the State of Delaware, Department of Health and Social Services, Medicaid Program, is requesting an extension of its 1115 Demonstration Waiver to provide managed care services to the majority of Medicaid eligible individuals, known as the Diamond State Health Plan.

Under the current waiver authority, the Diamond State Health Plan is authorized until March, 2001. The Balanced Budget Act of 1997 waiver authority will allow the program to continue, without re-authorization, until March 1, 2004. The State intends no changes to the Diamond State Health Plan during the extension period.

All questions and/or comments should be directed in writing no later than January 31, 2000 to:

Ms. Kay Holmes,
Chief Administrator for Managed Care
Medical Assistance Programs
Division of Social Services
P.O. Box 906
New Castle, DE 19720

**DEPARTMENT OF
TRANSPORTATION****STATEWIDE ACCESS MANAGEMENT POLICY
STATEWIDE CLASSIFICATION MAPS**

The Delaware Department of Transportation (DelDOT) is announcing the release of the Statewide Access Management Policy (Policy) and Statewide Classifications Maps (Classification Maps) for public review. The Department will also hold a public hearing on these items prior to adopting them in their final form.

The Policy, which follows below, was developed in accordance with Delaware Code, Title 17, Chapter 146(a) and provides a combination of regulatory and administrative actions that will help determine how and where connections are made between land developments and the transportation system. The Classifications Maps show how the Policy will be applied to individual state-maintained roadways.

The public hearing will be held on February 1, 2000 at the DNREC Auditorium, 89 Kings Highway, Dover. DelDOT staff and a court stenographer will be available starting at 5 p.m. to provide background information and take statements for the record. The formal auditorium portion of the hearing will start at 7 p.m. with a short presentation by DelDOT staff and testimony from the public taken immediately after. Written comments on the Policy and Classification Maps will be taken through February 21, 2000 and may be submitted along with questions or other written material, by mail to the Office of External Affairs, DelDOT, P.O. Box 778, Dover, DE 19903 or by telephone at 1-800-652-5600.

After receipt of comments at the hearing as well as receipt of any written comments on or before February 21, 2000, the Department will issue a final regulation adopting the Policy and Classification Maps, in accordance with the Administrative Procedures Act (29 Delaware Code, Chapter 101 et. seq.).

For more information on the public hearing, or to receive copies of the Classifications Maps or additional copies of the Policy beginning after January 1, 2000, please contact Mr. Joseph Cantalupo at (302) 760-2121.

In accordance with Subsection 8409, Chapter 84, Title 29 of the Delaware Code, our public meetings are designed to ensure that the public has ample opportunity to participate in the transportation planning process. If requested in advance, DelDOT will make available the services of an interpreter for the hearing impaired. If an interpreter is desired, please make the request by phone or mail a week in advance through the office of External Affairs as noted above.

SUBSCRIBE TO THE OFFICIAL SOURCE OF COMPLETE INFORMATION ON DELAWARE STATE REGULATIONS

THE DELAWARE REGISTER OF REGULATIONS



A single-source document for regulatory information, including proposed and adopted text of state regulations, all emergency regulations, Governors Executive Orders and Appointments, Attorney General Opinions, General Notices and notices of public

hearings and open meetings of state agencies.

PUBLISHED MONTHLY - \$120.00 PER YEAR

YES, PLEASE ENTER MY SUBSCRIPTION FOR THE DELAWARE REGISTER AT \$120/YEAR

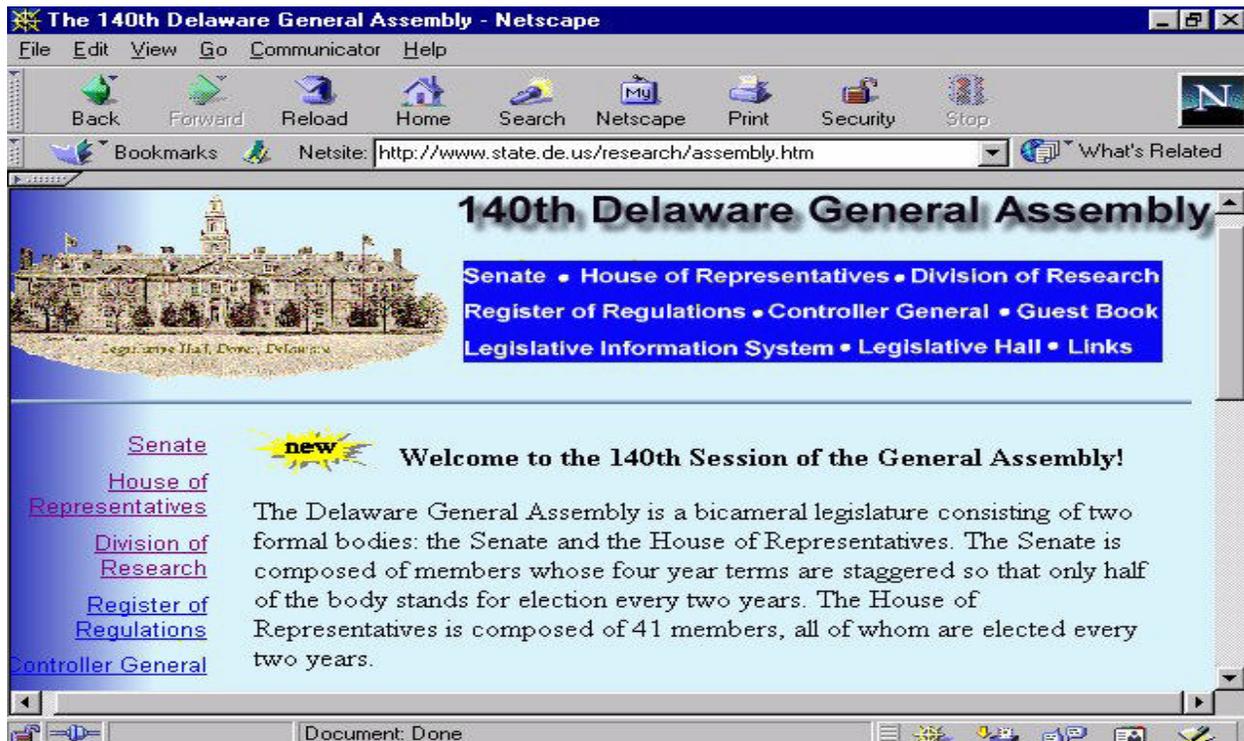
You will be billed upon receipt of your order. Subscription period runs from January to December. Mid-year subscriptions will be prorated at \$10 per issue. Back issues are available at \$12 per issue. Subscription fees are non-refundable.

NAME _____ ADDRESS _____

ORGANIZATION _____ CITY _____

PHONE _____ STATE _____ ZIP _____ EMAIL _____

Visit The Delaware General Assembly On The Web!



The General Assembly Website features:

- ! Current legislative information
- ! Information on both the Senate and House of Representatives
- ! Access the Delaware Code
- ! Access to the Delaware Register of Regulations
- ! Information on the legislative process
- ! Various reports and publications

The General Assembly Website is located at:

<http://www.state.de.us/research/assembly.htm>



LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME _____ ADDRESS _____

ORGANIZATION _____ CITY _____ FAX _____

PHONE _____ STATE _____ ZIP _____ EMAIL _____

Please check the specific service(s) to which you wish to subscribe :

<u>SERVICES</u>	<u>ANNUAL COST</u>
One copy of all legislation introduced:	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$100
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$775
One copy of all legislation signed by the Governor:	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$195
One copy of House and Senate calendars:	
<input type="checkbox"/> 1st Session set - - - - -	\$75
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$100
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$775
One copy of all Governor's Advisories:	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$25
Daily Legislative Agendas and weekly Standing Committee Notices:	
<input type="checkbox"/> Via Fax - - - - -	\$150

* Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.

If you have any questions about our subscription services, please contact Ms. Ginny Potts in the Division of Research by dialing, toll-free, (800) 282-8545 (in state). Ms. Potts may also be reached via E-Mail at vpotts@state.de.us. Please dial (302) 739-4114 if you are calling from outside Delaware.

Please return this order form to Ms. Potts at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to (302) 739-3895 as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.